2003

EDSON F. PACKER as Trustee for the Edson F. Packer Trust and SHARON B. PACKER as Trustee for the Sharon B. Packer Trust and Edson F. Packer and Sharon B. Packer v. Earl L. Cline II : Brief of Appellant

Utah Court of Appeals

Shawn D. Turner; Larson, Turner Fairbanks & Dalby; attorneys for appellees.
Earl Cline; pro se appellant.

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IN THE UTAH COURT OF APPEALS
OF THE STATE OF UTAH

EDSON F. PACKER as Trustee for the Edson F. Packer Trust and SHARON B. PACKER as Trustee for the Sharon B. Packer Trust and Edson F. Packer and Sharon B. Packer Plaintiff and Appellee Vs. Earl L. Cline II Defendant and Appellant	)	**APPELLANT BRIEF** Argument Priority Classification -- Case No. 20030468-CA

APPEAL FROM FOURTH DISTRICT COURT, WASATCH COUNTY
JUDGE DONALD J. EYRE
Case number 020500239

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APPELLANT PURSUANT TO RULE 9, of the Utah Rules of Appellate Procedure submits this Appellant Brief.

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STATEMENT OF JURISDICTION

Jurisdiction is conferred on Supreme Court by Utah Code Ann. 78-2-2(3)(j). On July 17, 2003 the Supreme Court has transferred this matter to the Court of Appeals.

STATEMENT OF ISSUES

The issues to be determined by the Appellate Court chiefly resolve around whether a mechanics lien that may have a facial deficiency prescribed by statute can be declared a Wrongful Lien per UCA 38-9-1. Appellant believes that in the process of the case that the court made several reversible errors, including; declaring a mechanics lien wrongful, Granting summary judgment without a motion for such being before the court, Granting summary judgment for $3000 when no evidence was ever presented to move judgment from the $1000 prescribed by statute to $3000 prescribed under certain conditions, awarding cost and attorney fees related to pursuing damages under mechanics lien statute when the issues from mechanics lien statues were dismissed, and changing the amount of a previous award of attorney fees without any reason or factual basis.

DETERMINATIVE ISSUES

a. Issue Number One: First Issue to be determined by the Court is whether a Mechanics Lien that may be Facially Invalid by failing to meet one of the steps outlined in Mechanics Lien statute becomes a Wrongful Lien pursuant to UCA. 38-9-1, and therefore subject to the summary proceedings provided in Utah Code Ann. 38-9-7. This Issue calls for statutory interpretation and thus presents a question of law which should be reviewed for correctness, giving no deference to the trial court's legal conclusions.

b. Issue Number Two: Whether a Mechanics Lien filed pursuant to UCA 38-1-3, but failed to state the time work started and stopped per UCA 38-1-7, should be declared void. This presents a correction of error because the issue is in conflict with previous appellate rulings in that "failure to comply with statutory requirement for notice of mechanic's lien will be viewed as technical, and will be upheld in absence of any prejudice, unless failures have compromised a purpose of the Mechanics Lien statute." **Projects Unlimited v. Copper State Thrift 798 P.2d 738. (Utah 1990)**

c. Issue Number Three: Whether Trial Court was in error in awarding attorneys fees under the Wrongful Lien statute for the entire case, when much of the work done by Appellee(s) counsel was done to obtain damages through the Mechanics Lien statute and those charges were dismissed. The standard of review is actually a rule of law and not a finding of fact. Court of Appeals will grant deference to the fact finder only when the findings of fact are sufficiently detailed to disclose the evidentiary basis for the Courts decision. **Woodward v. Fazio, 823 P.2d 474 (Utah App. 1991).**

d. Issue Number Four: Whether Trial Court was in error in awarding additional fees already ruled excessive from first award of fees, without any additional finding that Plaintiff was somehow now done work to deserve the additional fees. The standard of review is actually a rule of law and not a finding of fact. Court of Appeals will grant deference to the fact finder only when the findings of fact are sufficiently detailed to disclose the evidentiary basis for the Courts decision.

e. Issue Number Five: Whether the trial court was in error in awarding $3000 dollars in damages pursuant to the Wrongful

Lien statute through a summary judgment when there was a material dispute of fact related to Statute that grants court right to award $3000 damages, as provided in UCA 38-9-4. This Issue calls for statutory interpretation and thus presents a question of law which should be reviewed for correctness, giving no deference to the trial court's legal conclusions.

f. ISSUE NUMBER SIX: Whether court was in error in granting Summary Judgment on claims for Wrongful Lien when no motion for summary judgment existed. Rule 56(c) of Rules of Civil Procedure state **"(c) Motion and proceedings thereon. The motion, memoranda and affidavits shall be filed and served in accordance with CJA 4-501.** " No Motion was made by Appellee(s) and as such this also becomes a rule of Law and should be reviewed for correctness, giving no deference to the trial courts legal conclusions.

g. ISSUE NUMBER SEVEN: Whether court was in error when it denied Appellant the right to amend response to include a counter claim against Appellee(s). The Motion was filed on the grounds that new evidence had been found that could not have been known about at the time of the original filing of the

response. This is an issue of discretion on the part of the trial court. Court denied motion for amendment on the grounds that the Appellee(s) had already submitted a proposed final order and court had subsequently signed such. If court determines that Wrongful Lien statute is not appropriate disposition to the facts of this case, Appellant should have been allowed to file Counter Claim as it was needed to defend against Damages being sought under Mechanics Lien statute. "Rule 15(a) of Utah 'Rules of Civil Procedure permits the amendment of pleadings by leave of the court, and the rule is to be liberally construed so as to further the interests of Justice ..." **Girard v. Appleby 660 P.2d 245 (Utah 1983).** "When holder of mechanics lien brings action to enforce lien through counterclaim and principle claim would defeat lien claim, successful defense must necessarily be considered for purpose of awarding attorneys fees under Mechanics Lien statute". **First General Services v. Perkins 918 P.2d 480** (Utah App. 1996). This issue is an issue of discretion and as such a correction of error but because this is a summary judgment all findings of the court should be review as conclusions of law

and should be reviewed for correctness, giving no deference to the trial courts legal conclusions **Bonham v. Morgan 788 P.2d 497 (Utah 1989).**. This issue is brought up only because if Appellate Court agrees that wrongful lien statute is not appropriate in this case, Appellant would need counter claim to continue defense of Mechanics Lien claims on the part of Appellee(s).

h. ISSUE NUMBER EIGHT: Whether Appellee(s) should be further bared from seeking damages under the Mechanics Lien statute as the **Petition to Nullify Lien** that was filed by Appellee(s) on May 2, 2002 was brought under Wrongful Lien statute. If the Appellate Court decides that Wrongful Lien statute was not an appropriate disposition to this case then Appellee(s) should forever be barred from seeking damages under the Mechanics Lien statute as the appropriate way to have an invalid Mechanics Lien dismissed is prescribed by UCA 38-1-28 in which an alternate security is to be provided in an amount of 150% of the lien amount. No Alternate security was provided and Subsequent to the ruling of Court on June 17, 2002 Appellant released said lien and can not have it re-instated

and has lost most of the rights associated with holding a lien. Because of the time transpired those rights can not be reinstated.

STATEMENT OF CASE

Appellant filed a Mechanics Lien on a Residence owned by Appellee(s) Edson and Sharon Packer. The Mechanics lien was for work and material done and furnished by both Appellant Earl Cline and his then wife Julie, the daughter of Appellee(s). The work was for a Giant Mural hand painted in the children's room. The Mural was over 40 feet long and close to ten feet high. Although much of the work on the mural was done by Appellants then wife, both sides agreed that Appellant him self had done "some work" on the painting. Appellant believed that because of a partnership with wife Julie and because both Appellant and Julie were told that when they were finished with the painting that they would be paid for it by Appellee, Mrs. Packer, that he had a right to lien the home for the unpaid work. A lien was filed in the amount of $70,300.

A Notice was sent from Appellee(s) Counsel Shawn Turner stating that they believed that the lien was a Wrongful Lien per UCA 38-9-1, giving Appellant 20 days to remove the lien. Appellant believed the lien was valid and failed to remove said lien. A hearing was held in Fourth

District court on June 17, 2002. The Judge stated at the very first that "**this is most assuredly not a Wrongful Lien**", but preceded with the hearing. During questing by the Judge, Appellant admitted that the lien didn't state the date work started and stopped on the project. Appellant also admitted that there wasn't a notice required if the lien was on a "Owner Occupied Residence". There is a dispute as to whether the work done on Appellee(s) home would require the notice. Appellant disputed the allegation that the lien was not timely. The Court ordered that the lien was void, but at the time didn't state that the lien was Wrongful. Later after a disagreement about whether attorney fees could be awarded under the Mechanics Lien statute the court ordered that the fees be awarded under the Wrongful Lien statute.

After some discovery Appellee(s) motioned for a summary judgment on all causes including wrongful lien and damages per the Mechanics Lien statute, and Punitive Damages. Court rejected the motion for summary judgment and stated that no punitive damages could be awarded as both statutes provided a form of punitive damages. Court also stated that Appellee(s) would have to pursue damages under one section or the other, but they were prevented from seeking damages under both statutes. Several months later Appellee(s) filed a Motion for relief from order and it was

denied, but court issued a memorandum of decision that stated that if Appellee(s) filed for summary judgment on only the wrongful lien statute, that court would grant such a motion. The motion was never filed but Appellee(s) simply submitted a final order and judgment for review. The failure to file the motion prohibited Appellant from arguing whether the court should award the $1000 damages or the $3000 which would depend upon the evidences presented. At about the same time Appellant submitted a counter claim and Petition to grant permission to file counterclaim. Permission was not granted because a couple of weeks later Court signed final order presented by Appellee(s). A motion to amend was filed by Appellant and that was denied by court. The Appellant has appealed the decision to the Supreme Court.

SUMMARY OF ARGUMENT

Appellant argues the among other things, Courts decision that mechanics lien was facially invalid and as such became a wrongful lien is in error as it conflicts with numerous court of appeals cases as well as state statutes. Appellant argues that decision to grant summary judgment based upon Wrongful lien statute was wrong because; 1. Issues should have been handled under the mechanics lien statute, and 2. Because court granted summary judgment of $3000 when testimony and argument were not able to

establish that Appellant was guilty of any type of fraud or had any knowledge that the lien was wrongful at the time of filing. Therefore even if Wrongful lien statute is appropriate to case, judgment should have been only $1000. Appellant argues that court abused discretion in granting attorneys fees for the entire case, when Appellant clearly prevailed on Mechanics lien issues and those fees should have been removed from any award of attorneys fees. Finally Appellant argues that court abused discretion by allowing Appellee to skip several steps needed to grant summary judgment, which prejudiced Appellant in his defense of the case.

DETAIL OF ARGUMENT

The First issue to be determined is whether a mechanics lien that may have a deficiency that is required from the mechanics lien statute is a Wrongful Lien per UCA 38-9. Appellee argued originally that Appellant was not entitled to file a Mechanics Lien. UCA 38-1-3 states the following are entitled to file a mechanics lien, "Contractors, subcontractors, and **all persons performing any services** or furnishing or renting **any materials** or equipment used in the construction, alteration, or improvement of any building or structure or improvement to any premises in any manner and licensed architects and engineers and **artisans** who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or

superintendence, or who have rendered other like professional service**, or bestowed labor**, shall have a lien upon the property upon or concerning which they have rendered service, performed labor, or furnished or rented materials or equipment for the value of the service rendered, labor performed, or materials or equipment furnished or rented by each respectively, **whether at the instance of the owner or of any other person acting by his authority as agent**, contractor, or otherwise except as the lien is barred under Section **38-11-107** of the Residence Lien Restriction and Lien Recovery Fund Act. This lien shall attach only to such interest as the owner may have in the property." (emphasis added)

Both parties agreed that Appellant had done "some work". In addition Appellant testified that he had provided materials to the project. Even if Appellant wasn't entitled to lien for the work that his then wife had done, he still had the right to lien for the work that he had done. It is clear that Appellant was "entitled" to file a mechanics lien as per Statute. The dispute would then be the value of the work done and if the lien overstated that value. The dispute of value would clearly be handled within the mechanics lien section and there would not be any reason to have the mechanics lien declared a Wrongful Lien per UCA 38-9.

The Appellee(s) suggested that the lien overstated the value of the work. Appellee Edson Packer stated in his affidavit that his daughter and Appellants then wife Julie painted the painting. Appellant testified through affidavits that Appellee, Sharon Packer had promised to pay both Julie and Appellant for the work when it was completed. During one conversation Julie and Appellee Sharon Packer, agreed that the value of the painting would have been over $60,000. Appellant testified that not only was he told that he would be paid for the work when it was done, but that his wife Julie and himself were involved in a partnership which would give Appellant the right to file the lien for the work that both he and his then wife had done. Again not a valid reason to have this lien declared Wrongful under UCA 38-9.

At the June 17, 2002 hearing, the Court made the statement from the bench that **"well, let me just make this comment. I've has several of these types of hearings. The definition, the definition of a wrongful lien, you know is, basically states that a, a wrongful lien is a lien that is not authorized by law or not signed by the owners of the, of the property. Clearly a mechanic's lien is authorized by law. It might, you know, and I understand that you allege that Mr. Cline, that the lien might be groundless. But it's clearly not a wrongful lien, is it?"** At that point the

court asked Appellant if the lien stated the time work started and stopped, and he admitted that it didn't. Appellant was then asked if the lien included the notice as required by statute for a owner occupied residence and he admitted that it didn't. There was a question as to whether the lien was timely and Appellant disputed that argument and even stated to court as to a time frame of when the work stopped. In subsequent argument to the court Appellant was able to show that the notice required by statute for owner occupied home only applies in a situation where a contractor is hired by written contract to build an owner occupied new home.

"PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner entered into a written contract an original

contractor, a factory built housing retailer, or a real estate developer;

(2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract.

Failure to include this language on the Notice of Lien may result in lien foreclosure being denied. Additionally, every lien claimant is required to provide to the homeowner instruction on how to gain protection from the lien under the Act and a form answer, affidavit, and motion for summary judgment as part of the lien foreclosure action documents (Utah Code Ann.

§ 38-1-11(4)(a)). Failure to provide the form will result in the foreclosure action being denied."

Clearly the only issue that may entitle the court to determine that the lien filed is a Wrongful Lien per UCA 38-9 is the failure to state the date work stopped and started.

In researching for this appeal Appellant searched at great length for a case similar to this. The only case found was a Washington Supreme Court Case **PATRICK v. BONTHIUS 124 P.2d 550**, in which the court determined that direct testimony by contractor as to date on which work was completed was sufficient to show the time when the last work and materials were furnished. The Utah Supreme Court has ruled a number of times on issues regarding the purported facial deficiencies in a Mechanics lien, although not specifically to the issue of the date and time work started and stopped.

In **PARK CITY MEAT CO. et al. V. COMSTOCK SILVER MINING CO. et al. 103 p. 254 (Utah Supreme 1909)** the Court ruled that "Where there has been a substantial compliance with the Statute creating a mechanics lien, and the lien has in fact been established, the lien will not be defeated by mere technicalities or nice distinctions". In **PROJECTS**

UNLIMITED v. COPPER STATE THRIFT 798 P.2d 738 (Utah 1990),

The court ruled; **"We begin our analysis by recognizing that "the purpose of mechanic's lien act is remedial in nature and seeks to provide protection to laborers and materialmen who have added directly to the value of the property of another by their materials or labor."** ***Calder Bros Co. v. Anderson, 652 P. 2d 922, 924 (Utah 1982).*** **On the other hand, we recognize that liens create "an encumbrance on property that deprives the owner of his ability to convey clear title and impairs his credit."** ***First Sec. Mtg. Co. v. Hansen 631 P.2d 919, 924 (Utah 1981).*** **A fact the importance of which is magnified by the pre-recordation priority accorded a valid mechanic's lien.** ***See Utah Code Ann. 38-1-5 (1988).*** **State legislatures and courts attempt to balance these competing interest through their mechanic's lien statutes and judicial interpretations thereof."**

"[2] Mechanic's liens are purely statutory, and a lien claimants may only acquire a lien by complying with the statutory provision authorizing them. ***Utah Sav. & Loan Assoc. v. Mecham 366 P.2d 598, 600 (1961).*** **However, Utah Courts have recognized that substantial compliance with these provisions is all that is required.** ***Chase v. Dawson, 215 P.2d 390 (1950); see also Graff v. Boise Cascade Corp., 660***

P.2d 721, 722 (Utah 1983). **Moreover, we have stated that "[a] lien once acquired by labor performed on a building with the consent of the owner should not . . . be defeated by technicalities, when no rights of others are infringed, and no express command of the statute is disregarded".** ***Eccles Lumber Co. v. Martin 87 P. 713, 716 (Utah 1906); see also Mickelsen v. Craigco, Inc., 767 P.2d 561, 563 (Utah 1989.*** **Courts from other states also subscribe to this view.** ***See H.A.M.S. Co. v. Electrical Contractors of Alaska, Inc., 563 P.2d 258, 263 (Alaska 1977); Horseshoe Estates v. 2M Co., 713 P.2d 776, 781 (Wyo. 1986)."***

"Although courts have differing opinions about how liberally to construe provisions within their mechanic's lien statutes, "the modern trend is to dispense with arbitrary rules which have no demonstrable value in a particular fact situation ***Consolidated Elec. Distribs., Inc. v. Jepson Elec. Contracting, Inc. 537 P.2d 80, 83 (Or. 1975).*** **Utah has Followed this trend both in the legislature and in the courts. . ."**

"[3] With these general principles in mind, we turn to the particular arguments in this case. We must determine whether the rigorous interpretations urged by the Banks are necessary to protect the interests of the parties in the instant situation. Unless we find that Projects'

alleged failures have comprised a purpose of the mechanic's lien statute, those failures will be viewed as technical, and in the absence of any prejudice, we will uphold the lien."

The issue to be properly determined by the court is whether Appellants failure to state time worked started and stopped somehow prejudiced Appellee in their case. If not, then lien should have been upheld by court. As Previously quoted above Washington Supreme Court ruled that in a suit to foreclose a mechanics lien, that the time work started and stopped could properly be introduced verbally in testimony in court. Appellee(s) do not ever claim to be prejudiced by the claim notice, in fact they preceded with a suit for damages based upon the mechanics lien statute. In the June 17, 2002 hearing, they were prepared to offer testimony as to when the worked started and stopped. Although Utah Code does require that the information be a part of the lien notice for a mechanics lien, the purpose is provided within UCA 38-1-5 which states that "**The liens herein provided for shall relate back to, and take effect as of, the time of commencement to do work or furnish materials on the ground for the structure or improvement, and shall have priority over any lien, mortgage or other encumbrance which may have attached subsequently to the time when the building, improvement or structure was commenced. . .**". Since

there were no other competing lien claims, the only one that could have been prejudiced was a mortgage company, that may have loaned on the property since the work began, but there are not claims from any mortgage company, therefore the lien should have been ruled a valid mechanics lien.

On the outside chance that the court was correct in determining the lien to not be valid due to it being deficient per statute, there is no provision within statute to move a mechanics lien that may be invalid to summary proceedings per UCA 38-9. In fact UCA 38-9-2 (3) states that "**this chapter does not apply to a person entitled to a lien under Section 38-1-3 who files a lien pursuant to Title 38, Chapter 1, Mechanics Liens.**" Appellant has already established that he was entitled to file a lien under 38-1-3. Appellee have acknowledge that the lien falls under Title 38, Chapter 1, Mechanics Liens by attempting to sue for damages under that section. UCA 38-1-28 provides that **any owner who disputes the validity or correctness of a mechanics lien may record a notice of release of lien and substitution of alternative security**. Appellee come to court alleging that Appellant did not comply with the strictures of the Mechanics Lien statute, yet they are the ones that failed to comply.

It is clear that even if the lien filed by appellant is ruled invalid because of a deficiency, that it should not have been ruled a Wrongful Lien under UCA 38-9 as this is in conflict with the very provisions of the Wrongful Lien Section. In addition the Appellate courts have already decided the issue of what constitutes a Wrongful Lien. In **Russell v. Thomas 999 P.2d 1245 (Utah App. 2000),** The court concluded that if Defendants didn't have an interest in the property, that Wrongful Lien section applied. In This case all parties agreed that Appellant had an interest in the property, therefore Wrongful Lien section does not apply. Appellant also found **Kurth v. Wiarda 991 P.2d 1113 (Utah App. 1999),** in which there was disputes about the validity of a purported mechanics lien, and one party attempted to invoke Wrongful Lien section. Court dismissed the contractors suit for mechanics lien issues, but also denied Kirths wrongful lien claims. It is clear that even if a mechanics lien is somehow declared invalid, that it does not give the court the right to move that mechanics lien claim to summary proceedings based upon Wrongful I ien section.

Appellee were awarded $3000 in damages based upon the provisions of UCA 38-9-5 which state that;

(3) A person is liable to the record owner of real property for $3,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs, who records or files or causes to be recorded or filed a wrongful lien as defined in Section 38-9-1 in the office of the county recorder against the real property, knowing or having reason to know that the document:

(a) is a wrongful lien;

(b) is groundless; or

(c) contains a material misstatement or false claim

If a person files a wrongful lien and refuses to have it released within 20 days then they are liable for $1000 in damages. Under this damages section of the wrongful lien chapter, if Appellant filed a wrongful lien he would only be liable to Appellee for $1000, unless they could establish that either Appellant knew that the lien was wrongful lien, or the lien was groundless or it contained a material misstatement or false claim. No evidence was ever presented that Appellant was responsible for any of those three issues that would entitle the court to charge him $3000. In Memo in

Support of Summary Judgment filed by Appellee(s) they used request for admissions Number 4, and Number 11, and stated that that Appellant had admitted them. Both of those statement were denied by Appellant and in fact Appellant filed an affidavit with his response to motion to Summary Judgment that again denied those assertions. Paragraph 7 of that affidavit stated that "**The lien I filed was before the divorce action was filed, and was not done to "Punish the Packers for supporting their daughter" as was alleged.**"" Paragraphs 11 – 13 stated that Appellant had personally done work on the painting and had been told by Mrs. Packer that we would be paid for the work. Her exact words were "**you kids could really use the money and I want to pay you for it**."

The final order stated that Appellant knew that the lien was wrongful. Appellant has argued all through out that proceedings that the lien was not even subject to Wrongful Lien Chapter. It is difficult to figure out how he was to have know that the lien was wrongful. In fact if he knew that the lien was missing the date and time work started prior to filing said lien, why wouldn't he have corrected it instead of risking going through all this legal crap. Both sides agreed that the work had been done and that Appellant had done "some work", therefore it is difficult to establish that the lien was groundless. There was disputed testimony as to the value of the lien and

Appellant testified that Appellee Sharon Packer stated in a conversation with him that it was worth $60,000 for the painting. The additional amount was for stenciling around fireplace and other work. Appellee testified through affidavit that the painting had "**sentimental value as it was painted by his daughter, but had no significant financial value.**" Reason and logic would demonstrate that a giant mural that was over 40 feet long and 10 feet high has some financial value. In any event the issue of the value of the painting is a disputed issue and should not subject Appellant to summary judgment for $3000. Again the Appellant believes that the trial court is in error in awarding $3000 in damages.

On the issue of award of Attorneys fees, Appellant disagrees with the several of the trial Courts findings. At June 17, 2002 hearing, Appellee was awarded attorney fees and Appellant was told that he could file objection to those fees. Appellee through council filed affidavit of fees requesting $1200 in legal fees. Court granted $750 and ruled that remainder was excessive. At the end of the case an affidavit of attorneys fees was re-submitted to the court asking for $3945 in Legal Fees plus filing fees in the amount of $160. The $3945 included the exact same legal fees that Appellee had tried to bill at the beginning of the case and court had already ruled to be excessive. Court granted Attorneys fees in the amount of $3750. One hundred and

ninety five dollars of that were already ruled excessive by the court. No additional evidence was presented to justify the additional award of attorneys fees. Appellate recognizes that trial court has broad discursion in awards of attorneys fees, but in this incidence where no additional evidence was provided to support such an award previously ruled excessive, Appellant believes trial court is in error.

Appellant also believes Trial Court is in error when it awarded Appellee(s) an award for attorney fees that included all legal fees from the entire case. Much of the work done on the case by Appellee(s) council was for damages related to the mechanics lien and Appellant was the successful party on any damages related to mechanics lien claims. In **Kurth v. Wirada,** previously quoted above court made findings that included adjusting non-compensable claims intertwined with compensable claims. In this case, trial court just awarded Appellee(s) all fees expended in the case and made no adjustment for work that was done in regard to damages related to mechanics lien. In this Appellant argues that court was in error in the amount of fees awarded. If Appellants claim that Wrongful Lien is not appropriate disposition to this case, then no Attorney fees should have been awarded to Appellee(s).

Finally Appellant argues that court abused is discretion when it signed final order without there being any motion for summary judgment with which the court could grant such motion. On September 20, 2002, Appellee(s) motioned for summary judgment on all counts. At November 27, 2002 hearing motion for summary judgment was denied by court. At that point if Appellee disagreed with the decision they could have submitted an order for courts signature and then moved court for reconsideration of that order. They could have also filed a new motion for summary judgment on just the wrongful lien issue. Appellee did neither but waited two months and then filed a motion for relief from order based upon Rule 4-501. Rule 4-501 has been repealed, but may have been in effect at the time of said motion, but even if it was it says nothing about motions for relief from order, thus the motion was improper. Court issued a memo stating that there was not an order from which to seek relief from, but stated that the court would grant a motion for summary judgment for the minimum damages from the wrongful lien statute. At that point Appellee should have submitted a motion for summary judgment, and Appellant should have had a right to motion for oral arguments on the issue and other rights available to him. Appellant was denied those rights and Appellate Court can now look at this issue as an abuse of discretion on part of trial court.

Appellant also notes that on Feb 28, 2003 that Appellee mailed a copy of a proposed final order for review. Before it had arrived, Appellant served a counter claim and petition to grant permission to amend to add counter claim. The Petition was filed on March 3, 2003 with the court. Court didn't sign final order until March 19, 2003 but stated that the court had previously entered a final judgment and denied petition to grant permission to amend. The fact that the petition was filed almost twenty days before courts filing of final order, should have allowed Appellant to have his petition to amend heard before the court and as such there would have still been more issues for the court, and as such final order and judgment were not proper determination to the case. Appellate recognizes that court has right to grant permission to amend or to deny such, but in this case court abused its discretion by allowing several steps required by Rules of Civil Procedure to be circumvented.

CONCLUSION

In conclusion the Trial courts decisions should be overturned for several reasons. Court should rule that wrongful lien was not proper disposition to this case. If court does grant Appellant request to rule wrongful lien section not appropriate disposition to case, then all other issues are moot and case should be remanded back to trial court for decisions

on remaining issues. If Appellate court does affirm the trial courts decision to declare lien wrongful, then there are still several remaining issues including amount of damages from wrongful lien statute, issue of attorneys fees, as well as procedural issues that prejudiced Appellant in his defense of case. For these reasons Appellant again argues that case should be remanded back to district court and remaining issues should be resolved including granting Appellant permission to amend claim to include counter claim, which has already been filed with the court.

Respectfully Submitted this 19 Day of November, 2003

Earl Cline

Appellant (Pro Se)

MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was hand delivered this, 20 day of November, 2003 to:

Shawn Turner
1218 West South Jordan Parkway, Suite B
South Jordan, UT 84095
466-6464

Exhibits

38-1-3. Those entitled to lien -- What may be attached.

Contractors, subcontractors, and all persons performing any services or furnishing or renting any materials or equipment used in the construction, alteration, or improvement of any building or structure or improvement to any premises in any manner and licensed architects and engineers and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other like professional service, or bestowed labor, shall have a lien upon the property upon or concerning which they have rendered service, performed labor, or furnished or rented materials or equipment for the value of the service rendered, labor performed, or materials or equipment furnished or rented by each respectively, whether at the instance of the owner or of any other person acting by his authority as agent, contractor, or otherwise except as the lien is barred under Section **38-11-107** of the Residence Lien Restriction and Lien Recovery Fund Act. This lien shall attach only to such interest as the owner may have in the property.

38-1-5. Priority -- Over other encumbrances.

The liens herein provided for shall relate back to, and take effect as of, the time of the commencement to do work or furnish materials on the ground for the structure or improvement, and shall have priority over any lien, mortgage or other encumbrance which may have attached subsequently to the time when the building, improvement or structure was commenced, work begun, or first material furnished on the ground; also over any lien, mortgage or other encumbrance of which the lien holder had no notice and which was unrecorded at the time the building, structure or improvement was commenced, work begun, or first material furnished on the ground.

38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.

(1) A person claiming benefits under this chapter shall file for record with the county recorder of the county in which the property, or some part of the property, is situated, a written notice to hold and claim a lien within 90 days from the date:

(a) the person last performed labor or service or last furnished equipment or material on a project or improvement for a residence as defined in Section **38-11-102**; or

(b) of final completion of an original contract not involving a residence as defined in Section **38-11-102**.

(2) The notice required by Subsection (1) shall contain a statement setting forth:

(a) the name of the reputed owner if known or, if not known, the name of the record owner;

(b) the name of the person by whom the lien claimant was employed or to whom the lien claimant furnished the equipment or material;

(c) the time when the first and last labor or service was performed or the first and last equipment or material was furnished;

(d) a description of the property, sufficient for identification;

(e) the name, current address, and current phone number of the lien claimant;

(f) the signature of the lien claimant or the lien claimant's authorized agent;

(g) an acknowledgment or certificate as required under Title 57, Chapter 3, *Recording of Documents; and*

(h) if the lien is on an owner-occupied residence, as defined in Section **38-11-102**, a statement describing what steps an owner, as defined in Section **38-11-102**, may take to require a lien claimant to remove the lien in accordance with Section **38-11-107**.

(3) Notwithstanding Subsection (2), an acknowledgment or certificate is not required for any notice filed after April 29, 1985, and before April 24, 1989.

(4) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or mail by certified mail a copy of the notice of lien to:

(i) the reputed owner of the real property; or

(ii) the record owner of the real property.

(b) If the record owner's current address is not readily available to the lien claimant, the copy of the claim may be mailed to the last-known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the affected property is located.

(c) Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the lien claimant from an award of costs and attorneys' fees against the reputed owner or record owner in an action to enforce the lien.

(5) The Division of Occupational and Professional Licensing shall make rules governing the form of the statement required under Subsection (2)(h).

38-1-28. Notice of release of lien and substitution of alternate security.

(1) The owner of any interest in real property which is subject to a mechanics' lien recorded under this chapter, or any original contractor or subcontractor affected by the lien, who disputes the correctness or validity of the lien may, either before or after the commencement of an action to enforce the lien, record a notice of release of lien and substitution of alternate security, which meets the requirements of Subsection (2), in the office of the county recorder where the lien was recorded.

(2) A notice of release of lien and substitution of alternate security recorded under Subsection (1) shall meet the requirements for the recording of documents in Title 57, Chapter 3, Recording of Documents, shall reference the lien sought to be released, and shall have as an attachment a surety bond or evidence of a cash deposit which:

(a) (i) if a surety bond, is executed by a surety company which is treasury listed, A-rated by AM Best Company, and authorized to issue surety bonds in this state; or

(ii) if evidence of a cash deposit, meets the requirements established by rule by the Department of Commerce in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(b) is in an amount equal to 150% of the amount claimed by the lien claimant in connection with the parcel of real property sought to be released;

(c) is made payable to the lien claimant;

(d) is conditioned for the payment of the judgment which would have been rendered against the property in the action to enforce the lien together with any costs and attorneys' fees awarded by the court; and

(e) has as principal the owner of the interest in the real property, or the original contractor or subcontractor affected by the lien.

(3) Upon the recording of the notice of release of lien and substitution of alternate security under Subsection (1), the real property described in the notice shall be released from the mechanics' lien to which the notice applies.

(4) (a) Upon the recording of a notice of release of lien and substitution of alternate security under Subsection (1), the person recording the notice shall cause a copy of the notice, together with any attachments, to be served within 30 days upon the lien claimant.

(b) If a suit is pending to foreclose the lien at the time the notice is served upon the lien claimant under Subsection (4)(a), the lien claimant shall, within 90 days from the receipt of the notice, institute proceedings to add the alternate security as a party to the lien foreclosure suit.

(5) The alternate security attached to a notice of release of lien shall be discharged and released upon:

(a) the failure of the lien claimant to commence a suit against the alternate security within the same time as an action to enforce the lien under Section **38-1-11**;

(b) the failure of the lien claimant to institute proceedings to add the alternate security as a party to a lien foreclosure suit within the time required by Subsection (4)(b); or

(c) the dismissal with prejudice of the foreclosure suit or suit against the alternate security as to the lien claimant or the entry of judgment against the lien claimant in such a suit.

(6) If a copy of the notice of release of lien and substitution of alternate security is not served upon the lien claimant as provided in Subsection (4)(a), the lien claimant shall have six months after the discovery of the notice to commence an action against the alternate security, except that no action may be commenced against the alternate security after two years from the date the notice was recorded.

38-9-1. Definitions.

As used in this chapter:

(1) "Interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, title holder, mortgagee, trustee, or beneficial owner.

(2) "Lien claimant" means a person claiming an interest in real property who offers a document for recording or filing with any county recorder in the state asserting a lien or other claim of interest in certain real property.

(3) "Owner" means a person who has a vested ownership interest in certain real property.

(4) "Record interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, titleholder, mortgagee, trustee, or beneficial owner, and whose name and interest in that real property appears in the county recorder's records for the county in which the property is located.

(5) "Record owner" means an owner whose name and ownership interest in certain real property is recorded or filed in the county recorder's records for the county in which the property is located.

(6) "Wrongful lien" means any document that purports to create a lien or encumbrance on an owner's interest in certain real property and at the time it is recorded or filed is not:

(a) expressly authorized by this chapter or another state or federal statute;

(b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or

(c) signed by or authorized pursuant to a document signed by the owner of the real property.

38-9-2. Scope.

(1) (a) The provisions of Sections **38-9-1**, **38-9-3**, **38-9-4**, **38-9-5**, and **38-9-6** apply to any recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or after May 5, 1997.

(b) The provisions of Sections **38-9-1** and **38-9-7** apply to all liens of record regardless of the date the lien was recorded or filed.

(2) The provisions of this chapter shall not prevent a person from filing a lis pendens in accordance with Section **78-40-2** or seeking any other relief permitted by law.

(3) This chapter does not apply to a person entitled to a lien under Section **38-1-3** who files a lien pursuant to Title 38, Chapter 1, Mechanics' Liens.

38-9-4. Civil liability for filing wrongful lien -- Damages.

(1) A lien claimant who records or files or causes a wrongful lien as defined in Section **38-9-1** to be recorded or filed in the office of the county recorder against real property is liable to a record interest holder for any actual damages proximately caused by the wrongful lien.

(2) If the person in violation of this Subsection (1) refuses to release or correct the wrongful lien within 20 days from the date of written request from a record interest holder of the real property delivered personally or mailed to the last-known address of the lien claimant, the person is liable to that record interest holder for $1,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs.

(3) A person is liable to the record owner of real property for $3,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs, who records or files or causes to be recorded or filed a wrongful lien as defined in Section **38-9-1** in the office of the county recorder against the real property, knowing or having reason to know that the document:

(a) is a wrongful lien;

(b) is groundless; or

(c) contains a material misstatement or false claim.

SHAWN D. TURNER (5813)
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IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR WASATCH COUNTY, STATE OF UTAH

EDSON F. PACKER as Trustee for the Edson F. Packer Trust and SHARON B. PACKER as Trustee for the Sharon B. Packer Trust Plaintiff,	:	**ORDER AND FINAL JUDGMENT**
vs.	:	
EARL CLINE II Defendant	:	Civil No. 020500239 Judge Donald J. Eyre

This matter came before the Court on Plaintiff's Motion for Summary Judgment. On November 27, 2002 a hearing was held on the Plaintiff's Motion. At the hearing the Court considered the pleadings filed with the Court, the testimony of the Defendant, and the argument of Plaintiff's counsel. Based on the evidence presented through the hearing and the prior hearing on the Plaintiff's claim that the Defendant had filed an unlawful lien, the Court finds as follows:

FINDINGS OF FACT

As this matter came before the Court on Plaintiff's Motion for Summary Judgment, the Court accepts for purposes of the Motion only, the properly sworn and supported statements of the Defendant as true. Notwithstanding the foregoing, the Court finds the following material facts to be undisputed.

1. Plaintiffs, Edson and Sharon Packer are Trustees of the respective Trusts which are the Plaintiffs in the above-entitled action.

2. The Defendant is an individual, who at all times relevant to these proceedings was the son-in-law of the individual Plaintiffs.

3. The Defendant and the Plaintiff's daughter are currently involved in a divorce proceeding.

4. On the 12th day of April, 2002, the Defendant filed a document entitled "mechanic's lien" with the Wasatch County Recorder, against property owned by the Plaintiffs in the amount of $70,000.00.

5. The document purporting to be a mechanic's lien was invalid on its face as it failed to set forth the statutorily required elements and was untimely filed.

6. The purported mechanic's lien was also invalid due to the Defendant's failure to comply with the notice requirements of the mechanic's lien statute, including notice to the Plaintiffs of the steps they could take to have the lien removed.

7. Plaintiffs made demand on the Defendant pursuant to UCA §38-9-4 to release the lien.

8. A period in excess of 20 days passed from the mailing of the letter and the Defendant failed to remove the lien.

9. The Defendant alleges the lien was for the value of a mural painted on a wall in the home owned by the Plaintiffs.

10. The Defendant has failed to produce a single receipt or other documentary item supporting his claim for the lien amount of $70,000.00.

11. The Plaintiffs have alleged that the Defendant performed no work on the mural, but rather that the work was done by their daughter. The Defendant has alleged that he performed a nominal amount of labor on the mural.

12. The Defendant has failed to establish what work, if any, he performed on the mural or the value of that service by any legitimate means, he has failed to identify when the work was allegedly performed, or how he derived a value for his services.

13. The Defendant alleges that he is entitled to a lien on the basis that the work was performed by his wife and that he supported his wife in her actions through such items as providing her transportation to her parent's home and his babysitting of their children while she worked on the mural.

14. Under oath the Defendant stated that the purpose of the lien was not to recover the money from his in-laws but instead to "protect" the Defendant from a claim that his in-laws might have been making on his residence as part of the forth coming divorce between the Defendant and his wife.

15. The Plaintiffs in their complaint sought recovery under the mechanic's lien statute, the wrongful lien statute, and under a general claim for punitive damages.

CONCLUSIONS OF LAW

Based on the foregoing facts the Court enters the following conclusions of law.

1. Because the "mechanic's lien" filed by the Defendant was invalid on its face it was not a mechanic's lien pursuant to Utah law.

2. The lien as filed constituted a wrongful lien as set forth in UCA §38-9-1 et. seq.

3. The Court finds that the Defendant knew the lien was a wrongful lien and further that the lien contained material misstatements and constituted a false claim pursuant to UCA §38-9-4 (3) and accordingly the Plaintiffs are awarded damages in the amount of $3,000.00 against the Defendant.

4. The wrongful lien statute also provides for the recovery by the successful party of its costs and attorney's fees. The Court finds that the costs incurred by the Plaintiffs which are recoverable in this action are $160.00 and the attorney's fees to be awarded to the Plaintiffs are $3,750.00, including the $750.00 of attorney's fees previously awarded by the Court.

5. The Court finds that the Plaintiff was obligated to elect its remedy between the two statutory schemes of the mechanic's lien statute or the wrongful lien statute. The Court further finds that by electing to have the hearing on the Plaintiff's Petition to Nullify Lien the Plaintiffs elected their remedy under that statutory scheme and are therefore barred from pursuing additional claims under the mechanic's lien statute.

6. The Court further finds that based on the facial invalidity of the document purporting to be a mechanic's lien in this action that the document so filed did not constitute a mechanic's lien pursuant to statute and accordingly the wrongful lien statute was the only remedy available

7. The Court finds that the penalty provisions contained within UCA §38-9-4 constitute a form of punitive damages thereby precluding the award of additional punitive damages in this matter.

8. Although the Defendant has made no motion for summary judgment, the Court finds that its determination that the Plaintiffs cannot recover under the mechanic's lien statute by virtue of the previous conclusions of law above, together with the Court's ruling on the damages involved in the wrongful lien statute result in the resolution of all issues present in this litigation. Accordingly this Order and Judgment constitutes the final Order and Judgment in the above-referenced litigation.

JUDGMENT

Based on the foregoing, Judgment is awarded against the Defendant Earl Cline II in the amount of $6,810.00 consisting of statutory damages of $3,000.00, recoverable costs int the amount of $160.00 and attorneys fees in the amount of $3,750.00.

Dated this 19th day of March, 2003

Judge Donald J. Eyre

)ss
County of Wasatch)

I, the undersigned, clerk of the district court of Wasatch County, Utah, do hereby certify that the annexed and foregoing is a true and full copy of an original document on file in my office as such clerk.
Witness my hand and seal of said court this 12 day of March 20 03
Clerk Wasatch County
Deputy

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4th DISTRICT COURT - HEBER COURT
WASATCH COUNTY, STATE OF UTAH

EDSON F PACKER, Plaintiff,	:	MINUTES ORAL ARGUMENTS
vs.	:	Case No: 020500239 PR
EARL CLINE II, Defendant.	:	Judge: DONALD J. EYRE Date: November 27, 2002

Clerk: roseb

PRESENT

Plaintiff(s): EDSON F PACKER
Defendant(s): EARL II CLINE
Plaintiff's Attorney(s): SHAWN D TURNER
Audio
Tape Count: 10:04

HEARING

Opening statements by Mr. Turner regarding the motion for summary judgment.
Response by Mr. Cline.
Response by Mr. Turner.
Defendant addressed the issues presented by Mr. Turner.
It is the findings of the Court that the motion for summary judgment is denied.

Earl Cline (In Pro Per)
1565 E 7200 S
Salt Lake City, UT 84121
568-2570

IN THE FOURTH JUDICIAL DISTRICT COURT
STATE OF UTAH, WASATCH COUNTY

EDSON F. PACKER as Trustee for the Edson F. Packer trust and SHARON B. PACKER as Trustee for the Sharon B. Packer Trust

Plaintiff

Vs.

Earl L. Cline II

Defendant (filed in pro per)

AFFIDAVIT OF EARL CLINE

Civil #020500239
Judge Donald J. Eyre

Earl L. Cline, having been duly sworn does hereby depose and say:

1. I am above 21 years of age and a defendant in the above named action.

2. The Plaintiff(s) are my father and mother in law through my marriage to their daughter.

3. My wife and I are currently involved in a divorce action which was filed by my wife on April 11, 2002.

4. Plaintiff(s) and myself are involved in numerous disputes related to the division of marital assets as well alleged loans that Plaintiff(s) have purported to have made to me as well as work done on their personal home by myself and my wife.

5. On March 24, 2002 My brother and I were retrieving some business items from my home and my wife Julie started to give me a hard time about all the supposed "debt" that we had. I made the comment that aside from a couple of credit cards and a couple of disputed medical debts, that we didn't really owe that much money. Julie responded that she had just signed some sort of loan document with her father and their attorney that stated all the money as well as down payment they had given us

for the house and the van they gave us several years ago were loans and that he was going to have me pay back half of them in the future divorce action. She told me that he had kept track of things and they had [redacted] us over $100,000 since the beginning of our marriage.

6. Shortly thereafter but before the filing of the divorce I calculated the time since we had last performed labor on their home to determine if I still had lien rights for the work my wife and I had done on the home and it turned our that they had not yet expired.

7. The lien I filed was before the divorce action was filed, and was not done to "punish the Packers for supporting their daughter" as was alleged.

8. Subsequent to the original lien filing one of the Plaintiff(s) neighbors called and said that the legal description I used to file the lien was including property that Plaintiff(s) had sold to other parties and asked if I would remove it from their property. I went up the next day to change the legal description, but the lady at the recorders office asked if I could release the lien and file a new one with the proper legal description. I did as she requested.

9. On or about September 24, 2002 I received an envelope from Shawn Turner (plaintiff(s) Council) certified mail which contained several documents including a Memorandum In Support Of Motion For Summary Judgment. Attached to the Memorandum was a copy of Plaintiff's First Set Of Interrogatories And Request For Admissions. The last page of the Interrogatories was a signature page signed by Shawn Turner himself and dated August 15, 2002. There was not a Mailing Certificate attached to the document.

10. This is the first time that I have seen this request for Interrogatorties. If they had been mailed to me in the past I never received them.

11. I have personally done work and provided materials on the painting in the Plaintiff(s) home.

12. My wife has also done work on the Plaintiff(s) home and had used marital assets to procure supplies and materials to do the work.

13. I had been told on several occasions by both my wife and also Mrs. Packer that we would be paid for the work in the mural and other work in the home when it was finished.

FURTHER RESPONDENT SAYETH NOT

Dated the 2 day of October, 2002

Earl L Cline

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
January 10, 2006
KONNON SMITH
7220 Highland Drive
Salt Lake City Utah 84121

10/2/02

Earl Cline (In Pro Per)
1565 E 7200 S
Salt Lake City, UT 84121
568-2570

IN THE FOURTH JUDICIAL DISTRICT COURT
STATE OF UTAH, WASATCH COUNTY

EDSON F. PACKER as Trustee for the Edson F. Packer trust and SHARON B. PACKER as Trustee for the Sharon B. Packer Trust

Plaintiff

Vs.

Earl L. Cline II

Defendant (filed in pro per)

RESPONSE TO PLAINTIFFS FIRST REQUEST FOR INTERROGATORIES

Civil #020500239
Judge Donald J. Eyre

Defendant here by submits the attached answers to the Plaintiff(s) request for Interrogatories.

Answers to "Request For Admissions"

1. Admit there is no written contract between you and any of the Plaintiffs with respect to the mural painted in Plaintiff s home.

1. Admit.

2. Admit there was no verbal contract between yourself and any of the Plaintiffs respecting the mural in Plaintiff s home.

2. Deny. Before Julie left for Salt Lake in July of 1999, I had told her that we couldn't afford for her to go back to Salt Lake. Julie got on the phone and her mother told her that She would pay Julie to paint a Mural so she could afford to come home.

In October 1999 Julie asked me if she could go home and finish the Mural. I spoke with Sharon on the phone and she told me that "as soon as Julie finishes the Mural we can pay you kids for it and I know that you could really use the money". I Flew Julie home on SU 8:10 to Vegas.

In Sept. 2001, I told Edson that I could come up to Bear Lake and help them clean out the cabin. Sharon said "I think it would be better if you (Earl) stayed over the weekend and watched the children because then Julie can spend the weekend painting the fireplace and working on the stenciling." She then said "We can pay you for the work after you are done and you kids could really use the money right now".

3. Admit you did not provide $70,300.00 worth of materials and/or labor on the mural located in Plaintiff s home.

3. Deny. The $70,300 was for the full value of the painting after it was completed.

4. Admit you knew that you had not provided $70,300.00 worth of labor and/or materials on the mural in Plaintiff s home at the time that you filed the mechanic's lien that is the subject matter of this action.

4. Deny. The value of the painting was derived from statements made by Sharon Packer and Julie Cline in Sept. 2001.

5. Admit the document attached hereto as exhibit " A ", is a true and correct copy of the document you created and filed with the Wasatch County Recorder.

5. Admit. This is the second lien. The first lien was released because I had the wrong legal description and the county recorders office asked me to file a new lien with the right description.

6. Admit that you filed the original of the document designated as exhibit " A " with the Wasatch County Recorder's Office.

6. Admit.

7. Admit you received the original of the letter attached hereto as exhibit "8"

7. Admit.

8. Admit that after receiving this letter you did fail to cause the lien to be released within the time frame demanded by the letter.

8. Admit.

9. Admit that you are currently a party in a divorce action with Julie Cline, the daughter of Plaintiffs, Edson and Sharon Packer.

9. Admit.

10. Admit that you filed the mechanic's lien against the Packer's property after the divorce proceedings had been initiated.

10. Deny. The original lien was filed on or about March 22, 2002. The divorce was not filed until April 11, 2002.

11. Admit you filed the mechanic's lien in an attempt to harass and punish the Packer's and/or to coerce them into pressuring Julie Cline into making concessions in the divorce proceeding.

11. Deny. It was filed because Julie told me that her father had made her sign papers that stated that every bit of money that they had given to us throughout our marriage was all loans and that they were going to ask the Judge to have me re-pay them through the impending divorce action.

Responses to "Interrogatories"

1. Identify each individual providing answers to these interrogatories or whom you consulted in order to answer these interrogatories.

1. Just Myself.

2. Identify any labor you claim to have provided on the mural located in the Packer's home by providing the following information:

a. The dates on which you provided any labor.

b. The specific tasks that you took constituting that labor.

c. The amount of time you spent employed on those tasks on each individual date.

2. a. Summer 1999, trips to Wall Mart to buy paint and supplies. Watching the children for the weekend so she could stay and paint. Julie spent much of the summer working on the painting. During Christmas 1999 through Feb. 2000 I spent several nights and or days helping her with various parts of the painting. During Summer 2000, I spent several days with Julie purchasing supplies and preparing for the trip to Houston where she was going to learn to paint the

Facially Invalid

ment. The Atkinsons refused both of these proposals, opting instead to obtain an immediate settlement.

Furthermore, the trial court questioned the Atkinsons extensively regarding their comprehension of Chad's condition and the implications of the settlement:

> THE COURT: Do you understand that by settling this case, and regardless of what later transpires, when you find out later that the child's injury is worse than you anticipated, and on the other hand even if it's better, that you will not ever be able to come back against Intermountain Health Care? Do you understand that?
>
> MRS. ATKINSON: Yes, sir, I do.

For the aforementioned reasons, we conclude that the probate hearing was conducted in a jurisprudential manner and that the Atkinsons participated with full knowledge of Chad's rights and the implications of their actions upon any future causes of action against IHC or Wetzel.

Furthermore, the release signed by the Atkinsons was done with full knowledge of Chad's rights, which has the effect of barring this cause of action. The release signed by the Atkinsons acquits IHC and their agent, Wetzel,

> from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever ... on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries ... resulting or to result from the accident....

We affirm the trial court's determination that, as a matter of law, no genuine issue of material fact exists with regard to the Atkinsons' allegations of fraud and negligent misrepresentation.[17] We have duly considered the Atkinsons' other claims and find them to be without merit.

Affirmed.

HOWE, Associate, C.J., and STEWART, DURHAM and ZIMMERMAN, JJ. concur.

17. The rule on summary judgment may apply even when some fact remains in dispute, we affirm summary judgment when all material facts are not *genuinely controverted. See Heglar Ranch,* 619 P.2d at 1391.

PROJECTS UNLIMITED, INC., a Utah corporation, Plaintiff and Appellant,

v.

COPPER STATE THRIFT & LOAN CO., Valley Bank & Trust Co., Cottonwood Thrift & Loan Co., Western Savings & Loan Co., Bradshaw Development Co., et al., Defendants and Appellees.

No. 860340.

Supreme Court of Utah.

Sept. 6, 1990.

Rehearing Denied Oct. 11, 1990.

Contractor brought action to foreclose mechanic's lien, and sought determination of priorities among claimants. The Third District Court, Salt Lake County, Judith M. Billings, J., granted summary judgment for financial institutions holding deeds of trust. Contractor appealed, and financial institutions cross-appealed, seeking award of attorney fees. The Supreme Court, Gregory K. Orme, Court of Appeals Judge, held that: (1) mechanic's lien notice was not invalid, even though notary failed to include her address and commission expiration date in jurat, contractor failed to segregate contract amounts attributable to individual condominium units, property description was overly broad, notice described property not initially owned by landowner, and contractor included claims arising under two separate contracts; (2) mechanic's lien notice was not invalid under Condominium Owners Act merely because lien described entire property on which condomin-

ium complex was constructed and failed to allocate separate amounts to be different units; (3) one financial institution was properly added as party defendant after expiration of period for commencing mechanic's lien action; and (4) trial court properly declined to consider evidence of parties' intent when construing recorded mechanic's lien release.

Affirmed in part; reversed and remanded in part.

1. Appeal and Error ⇐863, 934(1)

In determining whether trial court properly granted summary judgment, Supreme Court must review facts in light most favorable to losing party, review trial court's legal conclusions for correctness, and give no particular deference to trial court's view of the law.

2. Mechanics' Liens ⇐116

Mechanic's liens are purely statutory, and lien claimants may only acquire lien by complying with statutory provisions authorizing them.

3. Mechanics' Liens ⇐126

Failure to comply with statutory requirements for notice of mechanic's lien will be viewed as technical, and lien will be upheld in absence of any prejudice, unless failures have compromised a purpose of mechanic's lien statute. U.C.A.1953, 38-1-7, 38-1-8.

4. Mechanics' Liens ⇐154(6)

Strict compliance with notary public statute is not required to satisfy notice verification requirement of mechanic's lien statute. U.C.A.1953, 38-1-7, 46-1-8.

5. Mechanics' Liens ⇐154(6)

Jurat on mechanic's lien notice, which contained notary's signature, the date, and her official seal, substantially complied with verification requirement of mechanic's lien statute and with notary statute, and thus fact that notary failed to include her address and commission expiration date did not invalidate notice. U.C.A.1953, 38-1-7, 46-1-8.

6. Mechanics' Liens ⇐154(6)

Even if jurat on mechanic's lien notice must conform with notary statute, substantial compliance would be sufficient. U.C.A. 1953, 38-1-7, 46-1-8.

7. Mechanics' Liens ⇐136(2)

In determining adequacy of property description in mechanic's lien notice, court's main purpose is to determine whether notice adequately informed other claimants of existence of lien and whether other claimants were prejudiced, as matter of law, by the descriptive terms. U.C.A.1953, 38-1-7.

8. Mechanics' Liens ⇐136(2)

For competing claimants to prevail on allegation that property description in mechanic's lien notice was inadequate, claimants would have to show that they were somehow misled or prejudiced, and it would not be enough for them to show that other persons might have been prejudiced by lien notice. U.C.A 1953, 38-1-7.

9. Mechanics' Liens ⇐149(4)

Mechanic's lien notice was not invalid, at least against competing claimants, simply because lienor failed to segregate contract amounts attributable to individual condominium units, where one party was apparently the only owner of affected property when lien attached, and competing claimants did not argue that notice misled them as to claimed lien, nor did they demonstrate any prejudice from aggregation of claims. U.C.A.1953, 38-1-7, 38-1-8.

10. Mechanics' Liens ⇐157(3)

Mechanic's lien would not be invalidated merely because it overdescribed property upon which lien could properly attach, where there was no evidence that description was fraudulent, and competing claimants did not argue that they were misled or prejudiced by description. U.C.A.1953, 38-1-7.

11. Libel and Slander ⇐130

Inclusion of additional property in mechanic's lien notices would subject lienor to appropriate relief in slander of title action.

12. Mechanics' Liens ⇐157(3)

Mechanic's lien would not be invalidated as to competing claimants even if notice described property which was not even owed by owner at time that work was commenced on project, where court could determine what part of property was actually subject to lien, and competing claimants did not complain that they were actually misled or prejudiced by notice. U.C.A. 1953, 38–1–7.

13. Mechanics' Liens ⇐149(1)

Mechanic's lien notice may aggregate claims arising under more than one contract.

14. Mechanics' Liens ⇐157(1)

Lienor's inclusion of claims arising under two separate contracts in single mechanic's lien notice did not invalidate lien; competing claimants did not argue that notice failed to adequately notify them of existence of lien or in any way prejudiced them.

15. Mechanics' Liens ⇐149(4)

Mechanic's lien notice was not invalid under Condominium Ownership Act, which provides that no lien shall arise or be effective against property subsequent to recording of declaration, even though contractor filed mechanic's lien describing entire property on which condominium complex was constructed subsequent to filing of condominium declarations and failed to allocate specific amounts to different units; only effect under statute of intermediate filing of declarations was to make lien proportionately effective against each unit constructed under contract and each unit's corresponding undivided interest in common area. U.C.A.1953, 57–8–19.

16. Mechanics' Liens ⇐260(6), 268

Statute requiring mechanic's lien claimant to commence lien action and record lis pendens within 12 months after completion of original contract or suspension of work thereunder is not statute of limitations; penalty for not commencing action to enforce lien within 12–month period is invalidation of lien rather than preclusion of claim as with traditional statute of limitation. U.C.A.1953, 38–1–11.

17. Mechanics' Liens ⇐268

Mechanic's lienor's timely recordation of lis pendens imparts constructive notice to all persons concerned with property of action to enforce lien, regardless of whether they were named as parties or had actual knowledge of action. U.C.A.1953, 38–1–11, 78–40–2.

18. Mechanics' Liens ⇐263(10)

Commencement of mechanic's lien foreclosure action within 12 months after completion of original contract or suspension of work thereunder preserves lien as to all interested parties even if not named as party to that action. U.C.A.1953, 38–1–11.

19. Mechanics' Liens ⇐268

Only when mechanic's lienor fails to timely record lis pendens can interested person argue that it is not subject to mechanic's lien, and then only if such person was not named as party to foreclosure action and did not have actual knowledge of action. U.C.A.1953, 38–1–11.

20. Mechanics' Liens ⇐264(1)

Financial institution holding deeds of trust was subject to mechanic's lien, where contractor commenced foreclosure action and filed lis pendens within required 12–month period after completion of contract or suspension of work thereunder, and thus financial institution could properly be joined by appropriate amendment to complaint even after expiration of 12–month period. U.C.A.1953, 38–1–11.

21. Evidence ⇐397(1)

If contract is clear on its face, trial court need not, and in fact should not, consider evidence of contrary meaning.

22. Mechanics' Liens ⇐236

Trial court properly declined to consider evidence of parties' intent when construing recorded mechanic's lien release, where language of release was susceptible of no other interpretation but that two condominiums were completely released from scope of lien.

23. Mechanics' Liens ⇐236

Use of word "partial" with respect to partial release of mechanic's lien did not create ambiguity which would allow trial court to consider evidence of parties' intent when construing release, where release clearly was "partial" because it only released two of eight condominium units otherwise covered by lien notice.

See publication Words and Phrases for other judicial constructions and definitions.

24. Appeal and Error ⇐177

Supreme Court would not consider whether attorney fees should be awarded to claimant which prevailed in mechanic's lien foreclosure action brought by competing claimant, where claimant had not requested attorney fees as part of its motion for summary judgment, which trial court had granted. U.C.A.1953, 38-1-18.

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Jeffrey M. Jones, Salt Lake City, for Copper State.

Dennis V. Haslam and Kathy A. F. Davis, Salt Lake City, for Cottonwood Thrift.

Steven D. Crawley, Salt Lake City, for Bradshaw Development Co.

Richard H. Nebeker, Salt Lake City, for Metler.

Matthew F. Hilton, Draper, for Stringfellow and Highland Orchards.

Allen Sims and Gary E. Doctorman, Salt Lake City, for Hugo F. Diederick.

Richard A. Rappaport, Salt Lake City, for Carolyn L. Nielsen.

Julian D. Jensen, Salt Lake City, for Brent Ivie Elec., Inc.

Bruce A. Maak, Salt Lake City, for Deseret Pacific Mortg. and Scott A. Kafesjian.

GREGORY K. ORME, Court of Appeals Judge:

Projects Unlimited, Inc., appeals from a summary judgment invalidating its mechanic's lien against the interests of Copper State Thrift & Loan Company, Valley Bank & Trust Company, and Cottonwood Thrift & Loan Company, Inc. We affirm the summary judgment as to Cottonwood Thrift, but reverse as to Copper State and Valley Bank.

I. FACTS

Bradshaw Development Company, Inc. ("Bradshaw"), owned a parcel of land, the Highland Orchards property, which it planned to develop into the Highland Orchards Condominium project. The property was divided into two parcels with the objective of constructing condominiums in two phases—phase I and phase II. Phase I, when completed, would consist of eighteen condominium units. Bradshaw engaged Projects Unlimited, Inc. ("Projects") to construct some of the phase I units. In September 1982, Bradshaw and Projects entered into a contract for the construction of two units—FF-6-A1 and FF-6-B1, hereinafter referred to as units 1 and 2. Those parties entered into a second contract in April 1983 concerning the contruction of six additional units—FF-5-A1, FF-5-B1, FF-11-A1, FF-11-A2, FF-11-B1, and FF-11-B2, hereinafter referred to as units 3 through 8, respectively. The contracts allocated prices on a per-unit basis.

Copper State Thrift & Loan Company financed construction of the eight units. The Copper State loan to Bradshaw was secured by two trust deeds. The first deed was recorded in December 1982 and covered units 1 and 2. The second deed was recorded in June 1983 and covered units 3 through 8.

Relying on the terms of its loan agreement with Bradshaw, Copper State refused to advance additional funds to Bradshaw in June 1983. Sometime thereafter, Bradshaw stopped making payments to Projects. On October 7, 1983, Projects ceased construction with a substantial balance still owing to Projects. Bradshaw did

not record its condominium declaration until August 1983.

During construction, units 1, 2, and 3 were sold. The sales of units 1 and 2 were financed by Valley Bank & Trust Company, which recorded trust deeds on those units in May 1983. Copper State subordinated its December 1982 trust deed to the May 1983 trust deeds of Valley Bank. The sale of unit 3 was financed by Western Savings & Loan Company, which is not a party to this appeal. After construction was halted, units 4 and 5 were sold. The sales of these units were financed by Cottonwood Thrift & Loan Company and secured by trust deeds recorded in December 1983.

In November 1983, Projects recorded a notice of mechanic's lien against the Highland Orchards property. The notice described Bradshaw as the owner of the subject property. The lien notice described the property by a metes and bounds description including all of the phase I and phase II property.[1] The notice did not describe the eight constructed units, by employing their descriptions as used in the condominium declaration or otherwise, nor did it allocate unpaid amounts attributable to each unit. The notice did not distinguish between work performed under the September 1982 and April 1983 contracts. The notice of lien cited the construction starting date as October 10, 1982, and the ending date as October 7, 1983. Although the notice of lien contained the signature and seal of a notary and the date of notarization, it did not give the notary's address or commission expiration date.

Bradshaw and Projects negotiated to release from the lien units 4 and 5, financed by Cottonwood Thrift. The lien release specifically stated that units 4 and 5 were released from the scope of the lien in exchange for the payment of $90,000. Thereafter, Projects filed an amended notice of lien. The amended notice was essentially identical to the initial notice except that $85,000 was added to the "credits and offsets" figure and subtracted from the "balance owing" figure. The same metes and bounds description was used to describe the property. The amended notice did not exempt units 4 and 5 from the property description, but attached to it were a map of the entire condominium project and a copy of the partial release.

Projects commenced an action to foreclose the lien and recorded a lis pendens in March 1984. The complaint alleged that Bradshaw had breached its contracts with Projects. The complaint also called for a determination of priorities among the various claimants. Valley Bank was not named as a defendant in the complaint but had actual knowledge of the action at least by August 1984, when it reviewed a title report showing Projects' lis pendens and initiated relevant correspondence with Projects. On May 24, 1985, almost twenty months after it ceased construction, Projects filed an amended complaint which joined Valley Bank and others as defendants. Bradshaw failed to answer either complaint, and a default judgment was entered against it in December 1985.

Copper State, Cottonwood Thrift, Valley Bank, and Western Savings ("the Banks") moved for summary judgment on the remaining claims. They collectively argued that Projects' lien was invalid under the mechanic's lien statute and under the Condominium Ownership Act. Essentially, their arguments under the mechanic's lien statute were that (1) the jurat lacked the notary's address and the date her commission expired, (2) the notice describes more property than was actually subject to the lien, (3) the notice describes property which Bradshaw initially did not own, and (4) the lien did not distinguish between work performed under the September 1982 and April 1983 contracts. The Banks also argued that the Condominium Ownership Act required Projects to file a separate lien on each condominium unit as described in the condominium declaration.

1. Accordingly, the metes and bounds description was not confined to the property on which the eight units constructed by Projects were located. However, it appears from the record that the only new structures on any part of the Highland Orchards property were the units constructed by Projects.

Valley Bank also argued that Projects had failed to join it as a defendant within the statutorily prescribed time and was therefore barred from later amending its complaint to add that bank as a defendant. Moreover, Cottonwood Thrift argued that it was not a proper party to the suit because Projects had released the units it financed from the scope of the lien. Projects filed a cross-motion for partial summary judgment on its claim against Copper State, its construction lender.

The trial court granted the Banks' summary judgment motions and denied Projects' motion. The court concluded that (1) Projects had unequivocally released from the lien's coverage the units financed by Cottonwood Thrift, (2) Projects failed to join Valley Bank as a party within the required time, and (3) the lien was invalid due to improper notarization "and on grounds otherwise set forth in the moving defendants' memoranda on file."

On appeal, Projects challenges each of the trial court's conclusions. Primarily, it argues that Utah does not require a lien notarization to contain the notary's address and/or commission expiration date.

The Banks assert the same arguments on appeal that they asserted in the trial court. In particular, they argue that we should affirm the trial court's decision on the notarization issue. Moreover, the Banks assert that, even assuming we were to agree with Projects on the notarization issue, we can and should affirm the summary judgment due to other failures in the lien notice. And indeed, "we may affirm trial court decisions on any proper ground(s), despite the trial court's having assigned another reason for its ruling." *Buehner Block Co. v. UWC Assocs.*, 752 P.2d 892, 895 (Utah 1988); *see also State v. One 1979 Pontiac Trans Am*, 771 P.2d 682, 684 (Utah Ct.App. 1989). The Banks also cross-appeal, seeking an award of attorney fees in the district court and on appeal.

II. STANDARD OF REVIEW

[1] "Summary judgment is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Transamerica Cash Reserve, Inc. v. Dixie Power & Water, Inc.*, 789 P.2d 24, 25 (Utah 1990); *see* Utah R.Civ.P. 56(c). In our determination of whether the trial court properly granted summary judgment, we must review the facts in the light most favorable to the losing party. *E.g., Ron Case Roofing & Asphalt Paving, Inc. v. Blomquist*, 773 P.2d 1382, 1385 (Utah 1989). Moreover, we review the trial court's legal conclusions for correctness and give no particular deference to that court's view of the law. *Id.*

III. MECHANIC'S LIENS GENERALLY

We begin our analysis by recognizing that "[t]he purpose of the mechanic's lien act is remedial in nature and seeks to provide protection to laborers and materialmen who have added directly to the value of the property of another by their materials or labor." *Calder Bros. Co. v. Anderson*, 652 P.2d 922, 924 (Utah 1982). On the other hand, we recognize that liens create "an encumbrance on property that deprives the owner of his ability to convey clear title and impairs his credit," *First Sec. Mtg. Co. v. Hansen*, 631 P.2d 919, 922 (Utah 1981), a fact the importance of which is magnified by the pre-recordation priority accorded a valid mechanic's lien. *See* Utah Code Ann. § 38-1-5 (1988). State legislatures and courts attempt to balance these competing interests through their mechanic's lien statutes and judicial interpretations thereof.

[2] Mechanic's liens are purely statutory, and lien claimants may only acquire a lien by complying with the statutory provisions authorizing them. *Utah Sav. & Loan Assoc. v. Mecham*, 12 Utah 2d 335, 338, 366 P.2d 598, 600 (1961). However, Utah courts have recognized that substantial compliance with these provisions is all that is required.[2] *Chase v. Dawson*, 117

2. The Banks do not argue that Projects completely failed to comply with any of the particular requirements of Utah Code Ann. § 38-1-7

Utah 295, 296, 215 P.2d 390, 390 (1950); *see also Graff v. Boise Cascade Corp.*, 660 P.2d 721, 722 (Utah 1983). Moreover, we have stated that "[a] lien once acquired by labor performed on a building with the consent of the owner should not ... be defeated by technicalities, when no rights of others are infringed, and no express command of the statute is disregarded." *Eccles Lumber Co. v. Martin*, 31 Utah 241, 249, 87 P. 713, 716 (1906) (quoting 20 Am. & Eng. Encyclopedia of Law 276); *see also Mickelsen v. Craigco, Inc.*, 767 P.2d 561, 563 (Utah 1989). Courts from other states also subscribe to this view. *See, e.g., H.A. M.S Co. v. Electrical Contractors of Alaska, Inc.*, 563 P.2d 258, 263 (Alaska 1977); *Horseshoe Estates v. 2M Co.*, 713 P.2d 776, 781 (Wyo.1986).

Although courts have differing opinions about how liberally to construe provisions within their mechanic's lien statutes, "the modern trend is to dispense with arbitrary rules which have no demonstrable value in a particular fact situation." [3] *Consolidated Elec. Distribs., Inc. v. Jepson Elec. Contracting, Inc.*, 272 Or. 376, 380, 537 P.2d 80, 83 (1975). Utah has followed this trend both in the legislature and in the courts. A legislative example of this trend is the 1985 amendment to section 38–1–7 of the mechanic's lien statute. The 1985 amendment greatly simplified the mechanic's lien notice, dispensing with several of the more cumbersome lien notice requirements.[4] One judicial example of this trend is *Mickelsen*, in which this court clarified the lien verification process and dispensed with the notion that the claimant's verification required any formal ritual. 767 P.2d at 563.

[3] With these general principles in mind, we turn to the particular arguments in this case. We must determine whether the rigorous interpretations urged by the Banks are necessary to protect the interests of the parties in the instant situation. Unless we find that Projects' alleged failures have compromised a purpose of the mechanic's lien statute, those failures will be viewed as technical, and in the absence of any prejudice, we will uphold the lien.[5]

(1983) Rather, they argue that Projects' efforts did not substantially comply with the statutes.

3. This trend is not confined to this area of the law but can be seen in others as well. *See, e g, Tech–Fluid Servs, Inc v. Gavilan Operating, Inc*, 787 P.2d 1328 (Utah Ct App 1990) In *Tech–Fluid*, the Utah Court of Appeals took a similar position in the area of redemption The court concluded that where the provisions in the redemption statute are "procedural in nature and do not affect any substantive rights of the purchaser [substantial] compliance is all that is necessary" *Id* at 1334

4. The current version of section 38–1–7 provides in pertinent part

(2) This notice shall contain a statement setting forth the following information

(a) the name of the reputed owner if known or, if not known, the name of the record owner,

(b) the name of the person by whom he was employed or to whom he furnished the equipment or material,

(c) the time when the first and last labor or service was performed or the first and last equipment or material was furnished,

(d) a description of the property, sufficient for identification, and

(e) the signature of the lien claimant or his authorized agent and an acknowledgment or certificate

Utah Code Ann. § 38–1–7 (Supp 1990). Requirements under the 1984 version of this provision which are no longer part of the statute include actual verification of the statements in the lien notice, "a statement of [the claimant's] demand after deducting all just credits and offsets [, and] a statement of the terms, time given and conditions of his contract " Utah Code Ann. § 38–1–7 (Supp.1983)

5. It is important to emphasize the scope of this opinion. Our focus is of course upon the particular parties and particular facts in this case, but it is further narrowed by the "as a matter of law" standard implicit in reviewing summary judgments It may well be that the same lien notices would have worked significant prejudice on other parties not before us, such as owners of, or lenders secured by, the phase II parcel to which Projects had no valid claim Thus it is entirely possible that we would invalidate this same notice as it applied to another party who could demonstrate prejudice *Cf Horseshoe Estates v 2M Co.*, 713 P 2d 776, 781 (Wyo.1986) (holding lien sufficient as against party who failed to demonstrate prejudice or that it was misled) It is even conceivable that the Banks, or some of them, could demonstrate actual prejudice in the context of a trial. At this juncture, however, we only consider the Banks' contention that the liens are so flawed as to simply be void, regardless of any actual prejudice.

IV. INVALIDITY OF THE LIEN UNDER SECTIONS 38-1-7 AND -8

Sections 38-1-7 and 38-1-8 of Utah's mechanic's lien statute identify the statutory elements of a lien notice. At the time the dispute arose, section 38-1-7 provided that every notice of lien recorded with the county recorder must contain

> a notice of intention to hold and claim a lien, and a statement of his demand after deducting all just credits and offsets, with the name of the reputed owner if known or if not known, the name of the record owner, and also the name of the person by whom he was employed or to whom he furnished the material, with a statement of the terms, time given and conditions of his contract, specifying the time when the first and last labor was performed, or the first and last material was furnished, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself or of some other person.

Utah Code Ann. § 38-1-7 (Supp.1983).[6] Section 38-1-8 provided:

> Liens against two or more buildings or other improvements owned by the same person may be included in one claim; but in such case the person filing the claim must designate the amount claimed to be due to him on each of such buildings or other improvements.

Utah Code Ann. § 38-1-8 (1988).

A. Failure of the Jurat

At the time the dispute arose, Utah Code Ann. § 38-1-7 (Supp.1983) provided that every notice of lien "must be verified by the oath of [the lien claimant] or of some other person." The district court found that a proper verification under section 38-1-7 required compliance with Utah Code Ann. § 46-1-8 (1953), which provided: "To all acknowledgments, oaths, affirmations and instruments of every kind taken and certified by a notary public he shall affix to his signature his official title and his place of residence and the date on which his commission expires." The court then concluded that the notary's failure to include her address and commission expiration date in the jurat invalidated the verification, which made the lien void. We disagree.

Initially, we note that verification is an essential part of a lien notice and "not a hypertechnicality that we can discount." *First Sec. Mtg. Co. v. Hansen*, 631 P.2d 919, 922 (Utah 1981).[7] Verification by the lien claimant was thought necessary so that "[f]rivolous, unfounded, and inflated claims can thereby be minimized, and the prejudgment property rights of the [property owners] receive their due protection." *Id.* Verification accomplishes this purpose by creating "the possibility of perjury prosecution for verifying a false lien claim." *H.A.M.S. Co. v. Electrical Contractors of Alaska, Inc.*, 563 P.2d 258, 264 (Alaska 1977) (lien must be signed by claimant; corporate acknowledgment insufficient).

Although the 1983 mechanic's lien statute requires verification, Utah Code Ann. § 38-1-7 (Supp.1983), it does not state any particular procedure for verification. Those procedures have developed judicially in cases like *First Security Mortgage.* One of the most recent and instructive cases defining these procedures is *Mickelsen v. Craigco, Inc.*, 767 P.2d 561 (Utah 1989), decided after the trial court made its ruling in this case. In *Mickelsen,* we listed the essential elements for a proper verification: "(1) [T]here must be a correct written oath or affirmation, and (2) it must be signed by the affiant in the presence of a notary or other person authorized to take oaths, and (3) the latter must affix a proper jurat." *Id.* at 564. The Banks do not contest that an oath was made or that it was signed before a notary. They simply argue that the notary failed to affix a "proper jurat" because she omitted her ad-

6. Section 38-1-7 has been amended since 1983. *See supra* note 4.

7. In *First Security Mortgage,* a lien notice was held invalid because the lien claimant failed to sign the oath. The notice was insufficient even though the notary had signed the certificate. *See also Worthington & Kimball Constr. Co. v. C & A Dev. Co.*, 777 P.2d 475 (Utah 1989).

dress and the expiration date of her commission.

[4–6] The Banks would have us adopt a position requiring strict compliance with the *notary public statute* in order to satisfy the verification requirement of the mechanic's lien statute as expounded in *Mickelsen.* We decline to adopt this position. A jurat is "merely evidence of the fact that the oath was properly taken before the duly authorized officer." 50 C.J.S. *Jurat* 705 (1947); *see also Stern v. Board of Elections,* 14 Ohio St.2d 175, 181, 237 N.E.2d 313, 317 (1968); *Craig v. State,* 232 Ind. 293, 295, 112 N.E.2d 296, 297 (1953) (purpose is to evidence that oath was made before authorized officer). In view of this principle, because the jurat in this case clearly evidenced that the oath was given before a notary, it should be considered adequate. And even assuming that the legislature intended the inclusion of a jurat which conformed with the notary statute,[8] substantial compliance would certainly be sufficient to satisfy that requirement. *E.g., Chase v. Dawson,* 117 Utah 295, 296, 215 P.2d 390, 390 (1950).

In this case, the jurat contained the notary's signature, the date, and her official seal. These items were sufficient to evidence the fact that the document had been verified. Moreover, anyone who questioned the validity of the notarization could certainly confirm its authenticity with the simplest inquiry. Thus, we find that the lien's notarization substantially complied with the mechanic's lien and notary statutes. *See, e.g., Georgia Lumber Co. v. Harrison Constr. Co.,* 103 W.Va. 1, 5, 136 S.E. 399, 401 (1927) (notice sufficient though notary failed to affix official seal in contravention of statute); *Stern,* 237 N.E.2d at 317–19 (failure of notary to affix signature to jurat did not invalidate affidavit).

The purpose of the verification requirement is to assure that lien claimants file legitimate claims. *First Sec. Mtg.,* 631 P.2d at 922; *see also H.A.M.S.,* 563 P.2d at 264. In *First Security Mortgage* and *H.A.M.S.,* liens were held invalid because the lien notices did not contain the signature of the claimants but simply the signature of a notary attesting to the oath of the claimants. Unlike with the notices in those cases, the president of Projects signed an oath that the contents of the lien notice were true and the notary attested to this fact. We see no policy reason why the notary's technical failure to include her address and commission expiration date increased, in any way, the likelihood that Projects would file a frivolous claim, especially since her failure presumably occurred *after* the verification was signed by the president.

For the above reasons, we find that the lien notice substantially complied with the "proper jurat" requirement established in *Mickelsen.*[9]

B. Other Grounds

Though we disagree with the trial court's legal conclusion on the notarization issue, we may still affirm the summary judgment based upon one of the other failures in the lien notice. The Banks argue that the lien notice is invalid because the metes and bounds description in the notice (1) covers more than one condominium unit without specifically referencing each, (2) describes more property than is actually subject to the lien, and (3) describes property which was not initially owned by Bradshaw and because the notice fails to distinguish between work completed under the two separate contracts.

8. In 1989, the legislature amended the mechanic's lien statute to specifically provide a particular jurat form. The current statute requires "an acknowledgment or certificate as required under Chapter 3, Title 57." Utah Code Ann. § 38-1-7(2)(e) (Supp.1990).

9. We recognize that this conclusion is inconsistent with *In re Williamson,* 43 B.R. 813 (D. Utah 1984), on which the trial court heavily relied. In *Williamson,* the bankruptcy court found that each element listed in section 46-1-8 was an essential part of a notary's certificate even when made on a mechanic's lien. *Id.* at 823. Utah law was admittedly unclear on this point when *Williamson* was decided. Nonetheless, we disagree with the analysis in *Williamson* and hold to the contrary.

These other grounds essentially challenge the descriptive contents of the lien notice. The purpose for descriptive terms in a lien notice is to adequately inform interested parties of the existence and scope of the lien. *See Park City Meat Co. v. Comstock Silver Mining Co.*, 36 Utah 145, 155, 103 P. 254, 260 (1906); *Eccles Lumber Co. v. Martin*, 31 Utah 241, 249, 87 P. 713, 717 (1906); *see also Parsons v. Keeney*, 98 Conn. 745, 749, 120 A. 505, 507 (1923); *Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc.*, 108 Idaho 487, 490, 700 P.2d 109, 112 (Ct.App.1985); *Consolidated Elec. Distribs., Inc. v. Jepson Elec. Contracting, Inc.*, 272 Or. 376, 382, 537 P.2d 80, 82 (1975). Thus, courts look to see whether interested parties have been informed of the existence of the lien and whether the lien has misled or prejudiced those parties. *See Eccles*, 87 P. at 717; *see also Beall*, 700 P.2d at 112; *Horseshoe Estates v. 2M Co.*, 713 P.2d 776, 781 (Wyo. 1986). When lien notices have sufficiently informed interested persons that a lien exists on identifiable property and the complaining party has not been misled by the notice, the purpose of the provisions has not been thwarted and courts are inclined to find substantial compliance. *See, e.g., Horseshoe*, 713 P.2d at 781.

[7, 8] As we analyze each of the Banks' challenges to the lien description, our main purpose is to determine whether the notice adequately informed the Banks of the existence of the lien and whether the Banks were prejudiced, as a matter of law, by the descriptive terms. "Absent any such claim of prejudice or being misled in any manner by the description[s] which [appear] in the lien statement, we [will] hold that it was sufficient." *Id.*[10]

1. *Inclusion Of More Than One Unit Without Designating Each*

[9] Section 38–1–7 provides, with our emphasis, that every notice of lien must contain "a description of the property to be charged with the lien, *sufficient for identification.*" Utah Code Ann. § 38–1–7 (Supp.1983). Section 38–1–8 provides in pertinent part: "Liens against two or more buildings ... owned by the same person or persons may be included in one claim; but in such case the person filing the claim must designate therein the amount claimed to be due to him on each of such buildings." Utah Code Ann. § 38–1–8 (1988). The Banks argue that these two sections require Projects to allocate its contract claims among all the relevant condominium units.

We begin our analysis with the first of three cases dealing with section 38–1–8 and its predecessor. In *Eccles Lumber Co. v. Martin*, 31 Utah 241, 87 P. 713 (1906), the owner of property on which a mechanic's lien had been filed argued that a lien notice was invalid because it failed to separately state amounts due on different structures. This court construed the predecessor statute to section 38–1–8, which contains language identical to that in section 38–1–8, and definitively stated that a blanket lien was not invalid for failing to allocate the amounts due. *Eccles*, 87 P. at 717. The lien claimant's failure did "not affect nor concern the owner of the property." *Id.* He was "fairly informed of the amount claimed against his property." *Id.* Rather, allocation was necessary "to protect the interests of the lien claimants between and among themselves." *Id.*

The next case in which we discussed the issue was *United States Building & Loan Association v. Midvale Home Finance Corp.*, 86 Utah 506, 44 P.2d 1090 (1935). In *Midvale Home*, a corporation promoted the construction and sale of homes in a subdivision. When the corporation defaulted on its construction loan, the loan company brought suit to foreclose its mortgage on the subdivision property. We were called upon to determine the priorities among the mortgage, several mechanic's liens, and the interests of the individual home purchasers. The home purchasers argued that they had priority over the lien

10. It is not enough for the Banks to show that other persons might have been prejudiced by the lien notice. In order to prevail, the Banks must show that they were somehow misled or prejudiced. *See supra* note 5.

claimants because the lien claimants did not allocate amounts due on the various houses constructed in the subdivision. The purchasers attempted to distinguish *Eccles* on the basis that *Eccles* involved only the original owner. We rejected this argument, concluding that the mechanic's liens "attached before any of the claims of the unit holders." *Id.* at 519, 44 P.2d at 1096.

The final case in which we dealt with this subject was *Utah Savings & Loan Association v. Mecham*, 12 Utah 2d 335, 366 P.2d 598 (1961). In *Mecham*, a claimant filed a lien covering numerous subdivision lots. Some of the lots were owned by the Mechams, and some, by another individual. The lien failed to allocate the amounts due on each lot. Mecham argued that the lien was invalid. We affirmed the general rules in *Eccles* and *Midvale Home* but concluded that the lien claimant could only aggregate claims if the various lots and structures described in the lien were owned by the same person.

As in *Midvale Home*, the Banks in this case acquired their interests in the property subsequent to the time the mechanic's lien attached. Unlike the situation in the *Mecham* case, Bradshaw was apparently the only owner of the affected property when the lien attached, i.e., when construction started. Finally, the Banks do not argue that the lien misled them as to the claimed lien, nor have they demonstrated any prejudice from the aggregation of the claims in this case. Thus, we hold that the lien notice was not invalid, at least as against the Banks, simply because Projects failed to segregate the contract amounts attributable to individual condominium units.

2. *Describing More Property Than Was Subject To Lien*

[10, 11] The Banks argue that even if Projects was not required to segregate the claims attributable to each condominium unit, the lien was invalid for describing more property than was properly subject to the lien. However, the general rule is that the inclusion of

> more land than that to which the lien may properly attach does not vitiate the lien upon so much of the land as is encompassed within the description and to which a lien may properly attach, at least if the description is not fraudulent or grossly misleading and innocent third parties are not affected.

Annotation, *Sufficiency of notice, claim, or statement of Mechanic's lien with respect to description or location of real property*, 52 A.L.R.2d 12, 83 (1957); *see also Adams Tree Serv., Inc. v. Transamerica Title Ins. Co.*, 20 Ariz.App. 214, 511 P.2d 658, 663 (1973) (valid portion of lien can be severed from invalid portion); *Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc.*, 108 Idaho 487, 700 P.2d 109, 112 (Ct.App.1985) ("the land properly subject to the lien is for the court to determine"); *Park City Meat Co. v. Comstock Silver Mining Co.*, 36 Utah 145, 103 P. 254, 259 (1909) ("court may limit the amount [of land] to what may be necessary"); *Horseshoe Estates v. 2M Co.*, 713 P.2d at 781 (lien which contained "no adequate description of the property" upheld where no claim of prejudice or being misled); *Engle v. First Nat'l Bank*, 590 P.2d 826, 832 (Wyo.1979) (validating lien which described entire ranch rather than small parcel upon which house was constructed since no showing of prejudice by bank).

We are persuaded that no purpose of the mechanic's lien statute would be served by totally invalidating a lien which overdescribes the property upon which the lien can properly attach. There is no evidence in the record to suggest that the description was fraudulent. Moreover, the Banks do not argue that they were misled or prejudiced by the description. Therefore, we cannot say, as a matter of law, that the overly broad description results in the lien's invalidity as to the Banks.[11]

11. At the risk of unnecessary repetition, we reiterate that in holding that the description does not invalidate the lien as to the Banks, we do not mean to suggest that the result would be the same for others. The lien, for example, is ineffective as to the phase II property, in which the Banks claim no interest, and inclusion of that property in the lien notices would subject

3. *Describing Property Not Initially Owned By Bradshaw*

[12] The Banks argue that the description may have included property not even owned by Bradshaw at the time the work was commenced on the project. They argue, citing *Mecham,* that this fact alone invalidates the lien. We do not think *Mecham* stands for this proposition. In *Mecham,* we invalidated the lien because "the materials, for which claim was made, *were not furnished upon buildings* owned by the same person or persons." 12 Utah 2d at 339, 366 P.2d at 601 (emphasis added). Here, the Banks do not argue that any of the materials or labor went into the construction of buildings not initially owned by Bradshaw but simply that some of the land included in the notice was not owned by Bradshaw at the outset of construction.

We fail to see much of a distinction for this case between a lien which includes too much property owned by the same owner and too much property part of which is owned by another person. In either event, the court can determine what part of the property is actually subject to the lien. *Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc.,* 108 Idaho at 498, 700 P.2d at 112. Whether the other person would have an action for slander of title is a separate matter. *See supra* note 11. Again, the Banks do not complain that they were actually misled or prejudiced by the notice. Thus, under these facts, the overly expansive property description did not compromise any purpose of the statute and does not invalidate the lien as to the Banks.

4. *Inclusion Of Separate Contracts In One Lien*

The Banks also argue that the lien must fail because the construction work on the property was performed under two separate contracts. Although the Banks advance this argument, they fail to cite much authority to support their position or to give any policy reasons for adopting such a rule. Utah courts have not addressed this question before, and there is a split of authority among other jurisdictions which have considered it.

[13] Some courts have held that when work is performed under separate contracts, the work may not be aggregated into a single lien claim. Rather, a separate notice must be recorded for each contract. *See, e.g., F.A. Drew Glass Co. v. Eagle Mill,* 1 Kan.App. 614, 42 P. 387, 390 (1895); *Schively v. Radell,* 227 Pa. 434, 441, 76 A. 209, 211 (1910). Other jurisdictions, however, have allowed lien claimants to file a single notice even though the work was performed under more than one contract. *See, e.g., Alabama State Fair & Agricultural Ass'n v. Alabama Gas Fixture & Plumbing Co.,* 131 Ala. 256, 31 So. 26, 28 (1901); *Booth v. Pendola,* 88 Cal. 36, 25 P. 1101, 1101 (1891); *Parsons v. Keeney,* 98 Conn. 745, 749, 120 A. 505, 507 (1923); *Saint Joseph's College v. Morrison, Inc.,* 158 Ind.App. 272, 302 N.E.2d 865, 874–76 (1973); *Consolidated Elec. Distrib., Inc. v. Jenson Elec. Contracting, Inc.,* 272 Or. 376, 537 P.2d 80 (1975); *Fischer v. Meiroff,* 192 Wis. 482, 484, 213 N.W. 283, 285 (1927).

After reviewing the various cases, we find more persuasive the cases which have allowed the aggregation of claims arising under more than one contract. In *Consolidated Electric,* one of the comparatively more recent cases, the Oregon Supreme Court allowed a lien claimant to file a single lien notice covering two contracts with separate owners. Although the court stated that it did not favor the practice, it noted that each owner was sufficiently notified of the lien against its property and no "prejudice [had] been suffered by the defendants in any material respect." 272 Or. at 383, 537 P.2d at 83. The holding of *Consolidated Electric* significantly departed from earlier Oregon case law. *See, e.g., Dimitre Elec. Co. v. Paget,* 175 Or. 72, 151 P.2d 630 (1944). In changing its position, the Oregon court recognized that "the modern trend [in mechanic's lien law] is to dispense with arbitrary rules which have no demonstrable value in a particular fact situation." *Consolidated Elec. Dist., Inc.,* 272 Or. at 380, 537 P.2d at 82.

Projects to appropriate relief in a slander of title action. *See supra* note 5.

[14] The reasoning in *Consolidated Electric* makes sense, and we adopt that position in this case. Again, the Banks do not argue that the notice failed to adequately notify them of the existence of the lien or in any way prejudiced them. Thus, we hold that the inclusion of claims arising under two separate contracts in a single lien notice did not invalidate Projects' lien.

5. *Summary*

The Banks do not seriously claim that any of the alleged description failures misled or prejudiced them. The lien notices, while not a model of clarity and precision, appear to have adequately accomplished the purposes of the statute as concerns the Banks. Thus, we hold that Projects' lien notice substantially complied with sections 38–1–7 and 38–1–8 of the mechanic's lien statute. Accordingly, the lien is valid, at least as between the parties to this appeal.

V. INVALIDITY OF THE LIEN UNDER SECTION 57–8–19

[15] The Banks also argue that the lien notice was invalid under the Condominium Ownership Act, which provides in pertinent part, with our emphasis:

> *Subsequent to recording the declaration* as provided in this act, and while the property remains subject to this act, *no lien shall thereafter arise or be effective* against the property. During such period liens or encumbrances shall arise or be created only against each unit .

Utah Code Ann. § 57–8–19 (1953). The Banks argue that Projects' lien arose and was effective only after recordation of the condominium declaration. Thus, they argue, Projects was required to file a notice of lien for each specific condominium unit.

Utah appellate courts have not had an opportunity to interpret section 57–8–19 in this context. However, both the Montana and Wisconsin Supreme Courts have interpreted statutes nearly identical to Utah's in contexts similar to this case. *See Hostetter v. Inland Dev. Corp.*, 172 Mont. 167, 561 P.2d 1323 (1977); *Stevens Constr. Corp. v. Draper Hall, Inc.*, 73 Wis.2d 104, 242 N.W.2d 893 (1976).

The facts in *Hostetter, Stevens,* and the instant case are essentially the same. In each case, the developer contracted for the construction of condominium units and construction work began. Thereafter, the developers filed condominium declarations. Some time later, the contractors filed mechanic's liens which described the entire property on which the condominium complex was constructed and failed to allocate separate amounts to the different units. In each case, the defendants argued that a blanket lien over the entire project was inappropriate once the condominium declaration had been filed.

The courts in both *Hostetter* and *Stevens* held that the blanket lien was sufficient. *Hostetter*, 172 Mont. at 173, 561 P.2d at 1326–27; *Stevens*, 73 Wis.2d at 114, 242 N.W.2d at 898. Both courts noted that the key factor was the point when the liens *arose* and *became effective* against the property; both courts held that this occurred at the commencement of construction. *Hostetter*, 172 Mont. at 172–73, 561 P.2d at 1326; *Stevens*, 73 Wis.2d at 114, 242 N.W.2d at 898 The filing of the lien notice merely preserved and perfected the lien. *Stevens*, 73 Wis.2d at 114, 242 N.W.2d at 898. The only effect that the condominium declaration had was to make the blanket lien proportionately effective against each unit constructed under the subject contract along with its corresponding undivided interest in the common area. *Hostetter*, 172 Mont. at 174, 561 P.2d at 1327; *Stevens*, 73 Wis 2d at 114, 242 N.W.2d at 898.

The Banks attempt to distinguish *Hostetter* and *Stevens*. They note that, unlike this case, the work in those cases was done under a single contract. They argue that this fact alone should produce a different result, but they do not state the reasons for their conclusion. We have concluded that a lien notice may include work performed under separate contracts and fail to see why the result should be different when the work is performed on a condo-

minium project.[12]

We find the reasoning in *Hostetter* and *Stevens* sound and adopt their rationale. Section 57–8–19 does not affect the validity of the lien in this case. The lien arose and became effective when Projects commenced work on the project. As previously noted, the lien notice was sufficient to perfect that lien, making the lien valid at least as to the units properly subject to the lien and as between the parties to this appeal. The only effect of section 57–8–19 and the intermediate filing of the declaration was to make the lien proportionately effective against each unit constructed under the subject contracts and each such unit's corresponding undivided interest in the common area. Having concluded that the lien notice is not facially invalid as to the Banks, we turn now to the separate arguments presented by Valley Bank and Cottonwood Thrift.

VI. VALLEY BANK DISMISSAL

The trial court granted summary judgment to Valley Bank on the basis of Utah Code Ann. § 38–1–11 (1988). That statute provides in pertinent part:

> Actions to enforce [mechanic's] liens must be begun within twelve months after the completion of the original contract, or the suspension of work thereunder for a period of thirty days. Within the twelve months herein mentioned the lien claimant shall file for record with the county recorder of each county in which the lien is recorded a notice of the pendency of the action, in the manner provided in actions affecting the title or right to possession of real property, or the lien shall be void, except as to persons who have been made parties to the action and persons having actual knowledge of the commencement of the action....

Id.

[16] Projects commenced this action and recorded its lis pendens five months after it ceased construction, well within the statutory twelve-month period. It did not, however, add Valley Bank as a defendant until it filed its amended complaint, nearly twenty months after construction ceased. Valley Bank argued, and the trial court agreed, that section 38–1–11 is a statute of limitation[13] which required Projects to name Valley Bank as a defendant within the twelve-month period, on pain of its action against Valley Bank being forever barred. We read section 38–1–11 differently.

Section 38–1–11 has two requirements which serve two different purposes. First, the statute requires the lien claimant to commence his action within twelve months of the completion of the project or suspension of work. *See supra* note 13. Valley Bank argues that the lien claimant is also required by this provision to join all persons having an interest in the property within the twelve-month period. However, the statute does not expressly require the lien claimant to do so and, on the contrary as hereafter explained, obviously contemplates the joinder of defendants not initially

12. In *Hostetter,* the Montana court specifically noted that the blanket lien was effective against the entire condominium project because "the work was performed under one contract, and not a series of separate contracts for each unit." *Hostetter v. Inland Dev. Corp.,* 172 Mont. 167, 170, 561 P.2d 1323, 1325 (1977). Apparently, Montana courts have adopted the position that a single lien may not encompass work performed under multiple contracts. *See Caird Eng'g Works v. Seven-up Gold Mining Co.,* 111 Mont. 471, 487–89, 111 P.2d 267, 276 (1941). We have declined to adopt that position and thus disavow that aspect of the *Hostetter* decision.

13. Although both parties have characterized section 38–1–11 as a statute of limitation, we do not view it strictly as such. Rather, it contains one of the requirements with which the claimant must comply "before [that] party is entitled to the benefits created by the [mechanic's lien] statute." *AAA Fencing Co. v. Raintree Dev. & Energy Co.,* 714 P.2d 289, 291 (Utah 1986). The penalty for not commencing an action to enforce a mechanic's lien within the twelve-month period provided in section 38–1–11 is invalidation of the lien rather than preclusion of the claim as with a traditional statute of limitation. *See, e.g.,* Utah Code Ann. § 78–12–23 (Supp. 1986). The commencement requirement of section 38–1–11 serves as a substantive restriction on the lien action and, unlike a true statute of limitation, is not waived if not pleaded. *AAA,* 714 P.2d at 291.

named after the expiration of the twelve-month period.

[17] The second "requirement" of section 38-1-11 is that the lien claimant file a lis pendens within the twelve-month period. However, the limited effect of a failure to comply with this requirement is expressly set forth in the statute. When a claimant fails to file the lis pendens within the twelve-month period, the lien itself is not invalidated, but rather it is rendered void as to everyone except those named in the action and those with actual knowledge of the action. By contrast, it follows logically, timely recordation of the lis pendens imparts constructive notice to all persons concerned with the property of the action to enforce the lien, *see* Utah Code Ann. § 78-40-2 (1989), regardless of whether they were named as parties or had actual knowledge of the action.

Valley Bank's contrary interpretation would render portions of the statute meaningless or nonsensical. *See Millett v. Clark Clinic Corp.*, 609 P.2d 934, 936 (Utah 1980) ("[S]tatutory enactments are to be so construed as to render all parts thereof relevant and meaningful, and that interpretations are to be avoided which render some part of a provision nonsensical or absurd."). For one thing, it would be pointless to provide that a lien would be valid as against persons with actual knowledge of the action to enforce the lien who had not been named as parties in the action as filed within the twelve-month period unless it were fully anticipated that such parties could be brought into the action, by amendment, beyond the twelve-month period. It would make no sense to consider the lien to be valid as against such persons unless it could be enforced against them by joining them in the action as previously commenced. Moreover, failure to join a defendant in the complaint as filed within the twelve-month period cannot be conclusively fatal to the claimant's ability to enforce the lien as against the defendant or it would be meaningless for the statute to refer to the continued effectiveness of the lien, even absent timely recordation of a lis pendens, as against non-parties, like Valley Bank in this case, who have actual knowledge of the action.

[18, 19] We conclude that section 38-1-11 should be read as a whole to require a lien claimant to commence a mechanic's lien action and record a corresponding lis pendens within the twelve-month period. Commencing the action preserves the lien. Recording the lis pendens imparts constructive notice of the lien enforcement action to everyone interested in the liened property. Only when the claimant fails to timely record the lis pendens can an interested person argue that it is not subject to the lien, and then only if such person was not named as a party and did not have actual knowledge of the action.

[20] In this case, Projects commenced the action and filed the lis pendens within the required twelve-month period. Valley Bank was therefore subject to the lien [14] and could properly be joined by an appropriate amendment to the complaint as was done in this case. The trial court accordingly erred when it dismissed Valley Bank from the action.[15]

VII. AMBIGUITY OF "PARTIAL" LIEN RELEASE

The trial court granted Cottonwood Thrift & Loan Company's summary judgment motion on two grounds: First, the

14. It is worth noting that even if Projects had not recorded its lis pendens timely, Valley Bank would still be subject to the lien because it had actual knowledge of Projects' action by no later than August 1984, when it reviewed a title report disclosing the action and commenced a dialogue with Projects concerning the matter.

15. Although Valley Bank directs our attention to California and Illinois decisions holding that a lien claimant may in no event add defendants after expiration of the dealine for filing a mechanic's lien action, we are not persuaded by those decisions. As previously noted, unlike California and Illinois statutes, section 38-1-11 is not a true statute of limitation. *See supra* note 13. Moreover, our statute is significantly different from the statutes in California and Illinois because it does not merely impose a deadline for commencement of the action, but goes on to delineate persons who will be subject to the lien even though not joined in the action within the twelve-month period. Our attention is drawn to no decision construing similar language in any other mechanic's lien statute.

court concluded that, "based on undisputed facts," Cottonwood Thrift had reasonably relied upon the recorded lien release. Second, the court concluded that the effect of the release was clear on its face. Projects argues on appeal that the release was ambiguous. It also argues that reasonable reliance is a concept necessarily too fact-sensitive for disposition by summary judgment.

[21] Whether a contract is ambiguous is a question of law. *E.g., Morris v. Mountain States Tel. & Tel. Co.*, 658 P.2d 1199, 1200 (Utah 1983). Moreover, the trial court must determine "whether a contract is ambiguous ... before it takes any evidence in clarification." *Id.* It follows, therefore, that if the contract is clear on its face, the trial court need not—and in fact should not—consider evidence of a contrary meaning.

[22–24] The release in this case stated in pertinent part that Projects "in consideration of [$90,000] ... does hereby release, satisfy and discharge that certain claim of lien ... against the following described real property." The release then described units 4 and 5. This language is susceptible of no other interpretation but that the two units were completely released from the scope of the lien.[16] The trial court properly construed the release as a matter of law and properly declined to consider evidence of another intent. Consequently, we affirm the trial court's decision to dismiss Cottonwood Thrift from the action.[17]

16. Projects argues that the release was ambiguous because the word "Partial" was added to the "Release of Lien" heading. However, in the context of this case, the release clearly was "partial" because it only released two of the eight units otherwise covered by the lien notice. We do not believe that the addition created any ambiguity in the instrument.

> In the determination of the real character of a contract, courts will always look to its purpose rather than to the name given it by the parties, and where a conflict exists between a name attempted to be applied to a particular contract and the language of the contract itself, the name will be rejected as inapplicable.

17 Am.Jur.2d *Contracts* § 269 (1964) (footnote omitted).

17. Because we agree that the release was clear and was not ambiguous, we need not address Projects' reasonable reliance arguments.

VIII. CONCLUSION

The trial court's order and judgment of dismissal are affirmed only as they relate to Cottonwood Thrift.[18] As to Copper State and Valley Bank, we reverse and remand for trial or other appropriate proceedings consistent with this decision.

HALL, C.J., HOWE, Associate C.J., and STEWART and ZIMMERMAN, JJ., concur.

DURHAM, J., having disqualified herself, does not participate herein; GREGORY K. ORME, Court of Appeals Judge, sat.

CORNISH TOWN, a municipal corporation, Plaintiff and Appellee,

v.

Evan O. KOLLER and Marlene B. Koller, husband and wife, Defendants and Appellants.

No. 890020.

Supreme Court of Utah.

Sept. 19, 1990.

Town brought action against homeowners to determine certain water rights,

18. The Banks request on appeal that we award attorney fees based upon Utah Code Ann. § 38-1-18 (1988), which provides: "In any action brought to enforce any lien under this chapter the successful party shall be entitled to recover a reasonable attorneys' fee, to be fixed by the court, which shall be taxed as costs in the action." In view of our holding, except as concerns Cottonwood Thrift, determination of any party's "success" is clearly premature. In the case of Cottonwood Thrift, we note that it, along with the other banks, did not request attorney fees as part of its motion for summary judgment. We will not entertain issues raised for the first time on appeal. *Zions First Nat'l Bank v. National Am. Title Ins. Co.*, 749 P.2d 651, 657 (Utah 1988). Therefore, we decline to consider Cottonwood Thrift's request for fees even though it has successfully defeated Projects' claims against it.